

# MDT CTEP MANUAL



*Montana Department of Transportation*



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## PREFACE

The *MDT CTEP Manual* has been developed to provide guidance to Local Entities in the administration, design and construction of Community Transportation Enhancement Projects (CTEP). The *Manual* presents much of the information normally required for a typical CTEP project; however, it is impossible to address every situation that the Local Entity will encounter. Therefore, administrators and engineers must exercise good judgment on individual projects and, frequently, they must be innovative in their approach to enhancement projects. This may require, for example, additional research into the design and construction literature.

The *MDT CTEP Manual* was developed by the MDT CTEP Section with assistance from the engineering consulting firm of Roy Jorgensen Associates, Inc. The Manual Review Committee consisted of:

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# Chapter 1

## CTEP PROGRAM

### 1.1 OVERVIEW

On June 10, 2005, the *Safe, Accountable, Flexible, Efficient Transportation Equity Act — A Legacy for Users* (SAFETEA-LU) became law. Two prior transportation acts, the *Intermodal Surface Transportation Efficiency Act of 1991* (ISTEA) and the *Transportation Equity Act for the 21<sup>st</sup> Century* (TEA-21), have reshaped the highway program to meet the Nation’s changing transportation needs. SAFETEA-LU builds on this foundation, supplying funds and refining the programmatic framework for investments needed to maintain and increase the transportation infrastructure. For more information on SAFETEA-LU, review the Federal Highway Administration (FHWA) website.

ISTEA, TEA-21 and now SAFETEA-LU require 10% of the Federal surface transportation funds be set aside for transportation enhancement projects. For Montana, the Montana Department of Transportation (MDT) is responsible for the administration of these funds. These funds are made available to local and tribal governments under the Community Transportation Enhancement Program (CTEP). CTEP allows eligible local and tribal governments to solicit, nominate, prioritize, develop and construct enhancement projects. The MDT CTEP Section, herein referred to as “CTEP Section,” provides oversight for these projects.

There are 112 county, city and tribal governments in Montana that receive CTEP allocations on an annual basis. These local and tribal governments, herein referred to as “Local Entities” or “Entities,” are required to adhere to the same regulations, policies and procedures that apply to all Federal-aid transportation programs. FHWA holds MDT responsible for ensuring all Federal-aid program requirements are met and MDT passes this responsibility on to the Local Entities.

CTEP is a reimbursement program. Currently, Federal funds are used to pay 86.58% of eligible, approved expenditures. Local matching funds account for 13.42% of expenditures. CTEP is able to reimburse 100% for bicycle and pedestrian safety education projects.

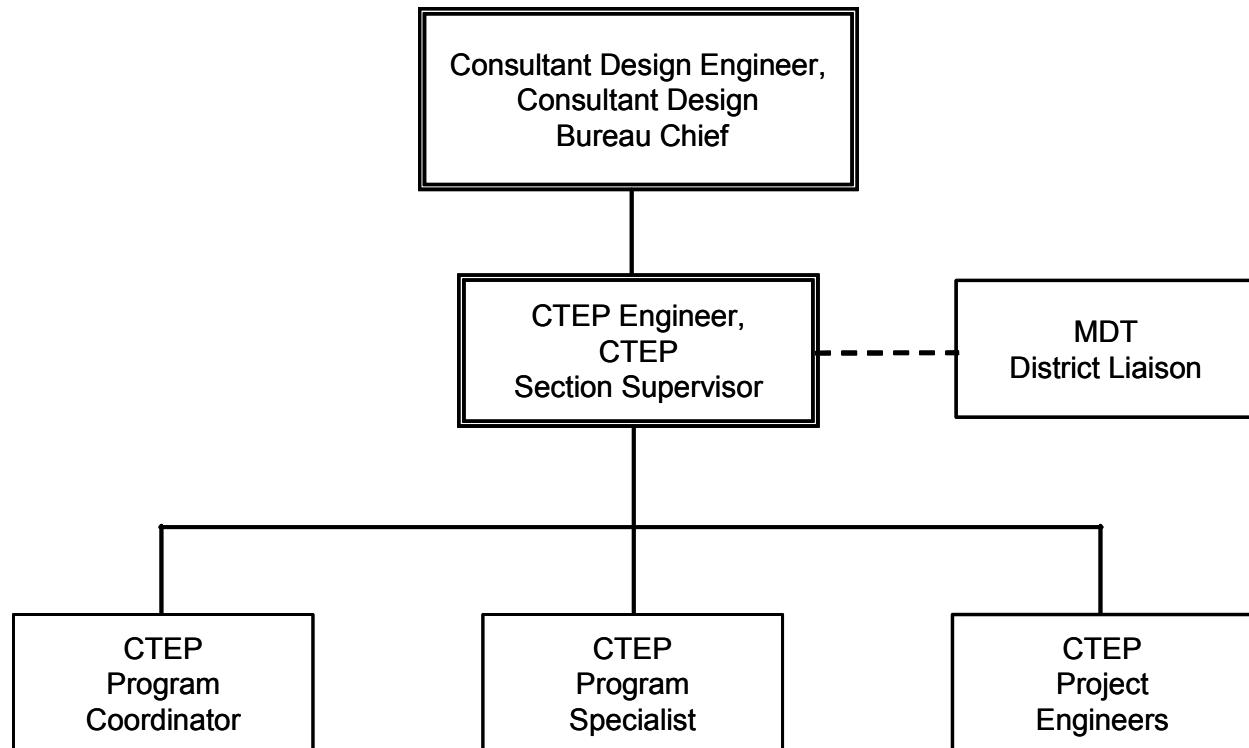
This *Manual* is written for the recipients of CTEP funds (Local Entities) and provides guidance for designing and constructing CTEP projects.

## 1.2 PROGRAM ADMINISTRATION

### 1.2.1 MDT CTEP Section

[Exhibit 1-1](#) illustrates the CTEP Section organization. The following is a brief description of the CTEP Section and the roles and responsibilities of each position within the CTEP Section:

1. CTEP Section. The CTEP Section is responsible for the management and administration of the Federal enhancement set-aside provision. The Section is responsible for the sub-allocation of approximately \$4.5 million annually to 112 qualifying Local Entities. The program annually generates approximately 40 diverse local interest projects (e.g., bicycle/pedestrian facilities, landscaping/streetscaping projects, historic preservation).
2. CTEP Engineer/Supervisor. The CTEP Engineer/Supervisor is responsible for the development and administration of the CTEP program and individual CTEP projects from the planning stage through design and construction. Duties include development of policies, guidelines and procedures to ensure that Federal and State requirements are met through coordination with Local Entities and Federal and State agencies.
3. CTEP Project Managers. The CTEP Project Managers are responsible for analyzing proposed CTEP projects to determine overall viability relative to engineering criteria, community needs, applicable regulations and funding requirements. Duties include consultation directly with Local Entities and Federal and State agencies as necessary to review, modify and deliver projects according to approved plans.
4. CTEP Program Coordinator. The CTEP Program Coordinator interprets Federal and State law, and performs professional and administrative work related to the CTEP program. Specific duties and responsibilities include, but are not limited to program administration, fiscal management and outreach.
5. CTEP Program Specialist. The CTEP Program Specialist is responsible for coordinating accounting, data management and outreach functions for a variety of CTEP projects. This includes project budget monitoring and reconciliation, data maintenance and reporting, and production/dissemination of education and outreach materials to support program goals and operations.
6. MDT District Liaison. The MDT District Liaison is responsible for overseeing the CTEP project during construction. Duties include ensuring the project has a certified construction inspector overseeing the construction, ensuring the project is in compliance with the Federal regulations and project specifications, and processing construction invoices submitted by the Local Entity.



**Exhibit 1-1 – MDT CTEP SECTION ORGANIZATIONAL CHART**

### **1.2.2 Local Entities**

Local Entities, who are recipients of CTEP funds, must perform the following tasks:

- involve the public in the project selection process (e.g., post notices, publish advertisements, notify the public about CTEP proposals);
- keep the public informed during project design and construction;
- prepare projects in a timely and satisfactory manner;
- implement projects substantially as described in the Federally approved programming documents;
- ensure that only eligible activities are performed with Federal-aid funds;
- maintain a financial management system that provides accurate information about project expenditures and ensures financial accountability and control;
- promote equal opportunity when implementing project activities;
- comply with the *National Environmental Policy Act* (NEPA);

- comply with *Americans with Disabilities Act*;
- comply with all civil rights laws including Equal Employment Opportunity (EEO) and labor compliance; and
- comply with applicable Federal and Montana laws, regulations and standards.

### **1.2.3 CTEP Project Application**

The CTEP Project Application is the official document allowing Local Entities to submit CTEP projects requests to MDT for matching funding. The CTEP Project Application can be downloaded from the [CTEP website](#).

Detailed instructions for completing and submitting the Application are provided in the Application Instructions that are also available on the [CTEP website](#). MDT accepts CTEP Applications on a rolling admission basis; therefore, applications can be submitted at any time provided the Local Entity has funding for the projects. For additional assistance, contact the CTEP Section.

### **1.2.4 Reimbursement for Eligible Activities**

Federal-aid funds are available to Local Entities when the following conditions are met:

- the Project Specific Agreement (PSA) is fully executed,
- FHWA provides approval,
- MDT issues a Notice to Proceed (NTP), and
- the Local Entity is in compliance with all contract conditions.

The NTP letter authorizes the Local Entity to begin incurring project costs. Project costs incurred prior to the NTP are not eligible for reimbursement. CTEP funds cannot be used for program administrative costs (e.g., expenditures associated with project application preparation or previous engineering studies or plans).

MDT recommends that new participants not incur costs until they have been briefed on the requirements and responsibilities they assume in administering a Federal-aid program and managing a Federal-aid project.

Eligible expenses are paid from Local Entity funds until Federal/State reimbursement occurs. The CTEP Section generally processes reimbursement requests within 30 days. Reimbursement payments are made directly to the Local Entity.

Under no circumstance may the Local Entity expend funds for project construction until the environmental review is completed and MDT issues a letter authorizing the Local Entity to begin the construction contract letting or materials procurement process.

### **1.2.5 Project Management Plan**

Once a project is approved, MDT recommends that Local Entity prepare a project management plan for assigning roles and responsibilities to specific individuals for the day-to-day project administration and management duties. Having a management plan helps to identify the assignment of duties that need to be addressed before beginning the project. Each person involved should have a copy of the task assignments and the project development schedule. In the event of staff turnovers, the plan will familiarize new staff with the responsibilities and operating procedures required in project administration.

### **1.2.6 Conflict of Interest**

#### **1.2.6.1 Federal Regulations**

FHWA conflict of interest regulations contained in 23 *CFR* 1.33 apply to all situations involving the procurement of property and services by Local Entities. Under these regulations, conflict of interest is summarized below:

1. Contract Authority. State officials or employees (or designees) with contract authority (e.g., negotiation, approval) may not have any financial or personal interest in the contract.
2. Project Personnel. Project personnel (e.g., engineers, attorneys, appraisers, inspectors) may not have any financial or personal interest in the project, other than employment.
3. Property Acquisition. State officials or employees may not have any financial or personal interest in an acquired project property unless it is openly disclosed in public records.

The MDT holds Local Entities responsible for enforcing these requirements.

Any person who falls into the conflict of interest definition above is disqualified from receiving benefits. This restriction extends to family members and business partners during the employee's tenure and one year afterwards. MDT may grant exceptions to these conflict of interest regulations, with FHWA approval, if it is decided that the exception will enhance the effectiveness of the project and is consistent with the program objectives. Requests for exceptions must be made to the CTEP Section, in writing.

#### **1.2.6.2 Montana Regulations**

Montana's code of ethics includes similar regulations and applies to procurement activities for local projects. Montana's requirements are more restrictive than Federal regulations and prohibit all municipal or county employees from entering into a contract with their employer (*MCA* 2-2-201 and 7-3-4367). This prohibition also extends to relatives of certain officials. The appropriate governing body may waive this prohibition, after following public notice procedures.

A common question regarding conflict of interest is if the same firm may provide preliminary engineering or construction engineering services and project administration services. According to MDT policy, CTEP funds cannot be used for project administration. In addition, FHWA regulations prohibit arrangements where a firm would effectively be reviewing its own work.

MDT acknowledges that some Local Entities may not have staff available to manage a CTEP project. In the event a third-party project administrator is hired, the cost of these services is not eligible for CTEP participation. An architectural/engineering consultant that is or intends to perform other work in the CTEP project (e.g., design, construction) cannot be involved in the financial management of the project.

### **1.2.7     Commitment of Resources**

Local Entities need to know how they plan to fund their share of the project (i.e., where their match money is coming from) and have all the necessary funding arrangements in place before they complete the CTEP Project Application. This includes providing the funding source for each project phase (i.e., preliminary engineering, right-of-way (ROW) or easement acquisition, construction engineering, construction). Local Entities should also consider any restrictions on the use of matching funds (e.g., generally Title 23 funds cannot be used as a match for other Title 23 funds).

If two or more Local Entities elect to pool their funds, the CTEP Project Application must indicate each Local Entity's funding source and the funding amount each Entity will contribute to each project phase. An agreement between the Entities should be prepared and signed showing exactly how much each Entity is willing to contribute to the project. This arrangement must be signed by all Entities involved. Where Entities pool their CTEP funds, it is preferred that only one Entity is responsible for the project administration.

At the completion of the project, any unused project funds (i.e., the project was completed with less funds than obligated) will be credited back to the Local Entity's CTEP account. If there are partners involved, the appropriate funding amount is credited back to each Entity.

### **1.2.8     Project Specific Agreement (PSA)**

PSAs are legal documents that govern project administration, development and maintenance and must include the following:

- project scope;
- project location;
- proposed method of development;
- general terms and conditions associated with the program and budget; and

- project budget, by account, detailing funding splits between Federal-aid funds, matching funds and additional contributions.

Each PSA contains boilerplate provisions for contract modifications and amendments, methods of payment and compliance requirements with applicable laws and regulations.

After acceptance of a Local Entity's CTEP Application, the CTEP Section will prepare an agreement for signature by the Entity. The agreement reflects key elements of the project as described in the CTEP Project Application. It is recommended that the Entity's attorney review the PSA to ensure it is consistent with legal authority and interests. Communicate any concerns to the MDT CTEP Program Coordinator. Note that CTEP funds are not requested from FHWA until the PSA is fully executed.

Proposed revisions or modifications that significantly revise the location, scope of work or funding of the project, may require a modification of the PSA. MDT will consider PSA modifications or revisions if requests are made in advance of the work. Local Entities must make their requests to the CTEP Section in writing. If the proposed change is substantial, additional public involvement is suggested, and in some cases required.

### **1.2.9 Federal Programming**

The Federal-aid Project Authorization and Agreement is an agreement between MDT and FHWA that defines the project location, work scope and funding. This document is completed by the CTEP Section and must be in place before any project costs are incurred.

The funding amounts in this agreement are set at actual contract amounts for preliminary and construction engineering and actual bid amounts for construction. These dollar amounts are deducted from the Local Entities' CTEP fund balance. Formal modifications/revisions are required when the project location, work scope or funding changes. Modifications/revisions need to be requested by the Local Entity to the MDT CTEP Project Manager overseeing the project. Most commonly, the Federal-aid Project Authorization and Agreement is modified when change orders or quantity overruns exceed the established funding level.

For more information on Federal Programming, see [Chapter 3](#).

### **1.2.10 Project Time Frames**

The project period after Federal programming is normally 36 months from the date the agreement is fully executed. MDT reserves the right to withdraw project approval 36 months after Federal programming. If a Local Entity anticipates any problems in complying with these requirements, they should notify MDT as soon as possible.

The final schedule, which should be incorporated into the management plan, should use monthly milestones for each task. The schedule should be posted by the Local Entity for periodic reference to compare actual work completed with the original planned schedule.

#### **1.2.11 Use of Federal Funds**

Local Entities are expected to make timely use of their allocated Federal funding. With the exception of small Entities that receive less than \$10,000 in annual allocations, Local Entities should develop projects and obligate their funding at least once in a three-year period. Smaller Entities can accumulate funding over several years to undertake larger projects. The CTEP Section will monitor Local Entity funding, and will periodically inquire with the Entity CTEP administrator as to their intent to develop projects.

#### **1.2.12 Acronyms**

For additional information regarding acronyms used in this *Manual*, see the *MDT Transportation Acronym Guide* (TAG) on the MDT website.

#### **1.2.13 Frequently Asked Questions (FAQs)**

For additional information and answers to frequently asked questions (FAQs) regarding the CTEP Program, review the FHWA Q&A website and/or the [CTEP website](#).

### 1.3 ENHANCEMENT CATEGORIES

CTEP projects must fit into one or more of 12 enhancement categories. A summary of each category, their eligible and ineligible uses and budget items for consideration are detailed in the following sections. For additional information on enhancement categories, the Local Entity should review the FHWA website.

#### 1.3.1 Pedestrian and Bicycle Facilities

Eligible projects in this category include providing bicycle and pedestrian facilities for safe accommodation, either through constructing new facilities or modifying existing facilities. The facility must comply with American Association of State Highway Transportation Officials (AASHTO), *Americans with Disabilities Act* (ADA) and MDT criteria. Bicycle and Pedestrian projects must be for transportation purposes rather than recreational purposes. Consider the following for bicycle and pedestrian facility projects:

1. Eligible Uses. Eligible uses include:

- adding and/or modifying road shoulders to accommodate bicyclists;
- adding and/or modifying bike lanes on existing roadways and related striping;
- constructing new, improving or replacing existing sidewalks, separate walking trails/paths and bike paths; and
- installing items at inter-modal points and vehicular parking facilities (e.g., benches for pedestrians, bike lockers and racks, facilities for bikes on buses).

2. Ineligible Uses. Ineligible uses include:

- sidewalk repair and maintenance; and/or
- constructing a sporting arena built for cycling, running, skating or equestrian uses.

3. Budget Considerations. Budget items for consideration for this category include:

- |                                       |                                      |
|---------------------------------------|--------------------------------------|
| • engineering fees,                   | • grading,                           |
| • environmental documentation,        | • drainage,                          |
| • preparing plans and specifications, | • grass and/or sod,                  |
| • permits,                            | • curbs and gutters,                 |
| • mitigation,                         | • traffic control devices,           |
| • site preparation,                   | • concrete or asphalt surfaces, and  |
| • bridges,                            | • bicycle or pedestrian furnishings. |

### **1.3.2    Landscaping and Scenic Beautification**

This category includes landscape planning, design and construction projects that enhance the aesthetic or ecological resources along highways, other transportation corridors (e.g., railways, bike paths, sidewalks), points of access and lands qualifying for other categories of CTEP activities. For example, projects that enhance the aesthetic resources or restore the ecological balance of the transportation system may include scenic overlooks as well as restoration of historic landscapes. Consider the following:

1.    Eligible Uses. Eligible uses include:

- reintroducing native or endangered plants or trees;
- landscaping as part of other eligible CTEP categories;
- linear highway landscaping, landscaping at interchanges, landscaping at noise barriers and landscaping or visually enhancing bridges; and
- streetscape projects (e.g., period lighting, historic sidewalk pavers, benches, planting containers, decorative walls and walkways, signs, public art, historical markers).

2.    Ineligible Uses. Ineligible uses include:

- security lighting;
- stand-alone drainage systems;
- constructing noise barriers or drainage improvements;
- post-construction finish work not related to a CTEP project (e.g., replanting, reseeding); and
- routine, incidental or maintenance activities (e.g., cutting grass, tree pruning or removal, erosion control, screen planting).

3.    Budget Considerations. Budget items for consideration include:

- |                                       |                               |
|---------------------------------------|-------------------------------|
| •        engineering fees,            | •        irrigation,          |
| •        environmental documentation, | •        debris removal, and  |
| •        grading,                     | •        hauling and dumping. |
| •        planting,                    |                               |

### 1.3.3 **Historic Preservation**

Projects in this category should enhance the transportation experience by improving the ability of the public to appreciate the significance of a historic property through a contemporary transportation-related function. All historic preservation projects must clearly demonstrate a contemporary relationship to the surface transportation system by function, proximity or impact.

Historic facilities and sites can be “restored” by returning the property to a condition that makes a contemporary use possible, while preserving the significant historic features of the property. Consider the following:

1. **Eligible Uses.** Eligible uses include:

- preserving a transportation-related historic property;
- preserving a non-transportation-related historic property, while creating a contemporary transportation use;
- costs associated with contemporary utility upgrades (e.g., water, electric, heating, air conditioning) when appropriate to make a building viable for continued public use; and
- costs associated with identifying, evaluating, recording, documenting, protecting, rehabilitating, interpreting, restoring and stabilizing a historic district, site or structure.

2. **Ineligible Uses.** Ineligible uses include:

- restoring private facilities for a non-public use;
- replicating or duplicating a historic building, structure or site;
- researching a site for eligibility on the National Register of Historic Places; and
- installing improvements designed for a non-transportation use or tenant (e.g., office partitions, furniture, display cases).

3. **Budget Considerations.** Budget items for consideration include:

- |                                       |                                       |
|---------------------------------------|---------------------------------------|
| • architectural and engineering fees, | • construction costs,                 |
| • environmental documentation,        | • landscaping, and                    |
| • permits,                            | • eligible furnishings and equipment. |
| • project management,                 |                                       |

### **1.3.4     Rehabilitation of Historic Transportation Facilities**

This category is intended to preserve historic transportation buildings, structures or facilities that are or were part of the surface transportation system. Rehabilitating and restoring these types of historic properties can be accomplished by returning the property to a condition that makes a contemporary use possible, while preserving the significant historic features of the property. These facilities must be open to the public and in public ownership. In rare instances, CTEP funds may be used for private property, but never if the private property or facility is operated on a for-profit basis or is not open to the general public. Consider the following:

1.     Eligible Uses. Eligible uses include:

- costs associated with contemporary utility upgrades (e.g., water, electric, heating, air conditioning), where appropriate, to make a building viable for public use;
- restoring or rehabilitating railway depots, roadway or pedestrian bridges, canal viaducts, ferry terminals, locomotives, antique automobile museums and displays; and
- costs associated with stabilizing and restoring historic elements of a transportation-related building and structures (interior and exterior) to a particular time, including the removal of later work.

2.     Ineligible Uses. Ineligible uses include:

- restoring or rehabilitating a non-transportation related property; and
- costs of creating improvements designed for a particular non-transportation use or tenant (e.g., office partitions, furniture, display cases).

3.     Budget Considerations. Budget items for consideration include:

- |                                       |                                       |
|---------------------------------------|---------------------------------------|
| • architectural and engineering fees, | • construction costs,                 |
| • environmental documentation,        | • parking facilities,                 |
| • permits,                            | • landscaping, and                    |
| • project management,                 | • eligible furnishings and equipment. |

### **1.3.5     Preservation of Abandoned Rail Corridors**

The purpose of this category is to preserve abandoned railway corridors for public use, including bicycle and pedestrian use. The acquisition of right-of-way can be a stand-alone project or in conjunction with the construction of a trail or greenway. Consider the following:

1. Eligible Uses. Eligible uses include:
  - purchasing abandoned rail corridors,
  - costs associated with developing and constructing a multi-use facility, and
  - informational signing about current usage or the historical aspects.
2. Ineligible Uses. Ineligible uses include:
  - projects not located within a railway right-of-way, and
  - preserving abandoned rail corridors strictly for use as an active rail line or highway.
3. Budget Considerations. Budget items for consideration include:
  - administrative costs,
  - environmental documentation,
  - survey costs,
  - appraisal fees,
  - acquisition costs, and
  - legal fees.

### **1.3.6 Scenic or Historic Highway Programs**

The purpose of this activity is to create opportunities for the traveling public to experience scenic or historic highways or sites. National Scenic Byways, Montana Scenic Byways, and State and Federal-designated historic highways are eligible for activities that improve travelers' access. CTEP funds may be used for activities that will protect and enhance the scenic/historic integrity and visitor appreciation of an existing scenic or historic highway, or historic site. The construction of tourist and welcome center facilities, whether new or existing, must have a clear link to a scenic or historic site. Consider the following:

1. Eligible Uses. Eligible uses include:
  - restoring historic highway-related features (e.g., retaining walls, historic markers);
  - installing interpretive plaques, signs, aesthetic guardrail and visually sensitive bridge rails;
  - developing scenic overlooks on State-designated Scenic Byways or National Scenic Byways; and
  - constructing new or restoring existing tourist and welcome centers related to scenic or historical sites.

2. Ineligible Uses. Ineligible uses include:

- rest area modifications;
- staffing, operating or maintenance costs;
- programs, marketing or promotion not related to the scenic or historic highway programs; and
- tourist and welcome centers at sites not meeting the scenic/historic designation requirements.

3. Budget Considerations. Budget items for consideration include:

- architectural and engineering fees;
- environmental documentation;
- permits;
- hazardous materials abatement documentation;
- construction (e.g., demolition, electrical, plumbing, structure);
- construction inspection;
- parking facilities;
- brochures, racks and displays; and
- concrete or asphalt surfaces.

### **1.3.7 Transportation Museums**

This activity includes the funding of capital improvements for surface transportation-related museums. The museum must be open to the public and operated by a public or non-profit organization meeting the definition of museums as stated below. If entrance fees are charged for the museum, a portion of the fee should be provided for the long-term maintenance and operation of the facility. This category is intended to preserve the surface transportation heritage of a municipality or region, or a particular mode of transportation, including an interpretation of that theme. Consider the following:

1. Definition. Transportation museums must meet the following definition of a museum:

- educational in nature;
- have a formally stated mission;
- have a formal and appropriate program of presentations and maintenance of exhibits;
- a legally organized non-profit institution or part of a non-profit institution or governmental entity;
- have a formal and appropriate program of documentation, care and use of collections and/or tangible objects;

- present regularly scheduled programs and exhibits that use and interpret objects for the public according to accepted standards; and
- have at least one full-time paid professional staff member who has museum knowledge and experience and has delegated authority and allocated financial resources sufficient to operate the museum effectively.

2. Eligible Uses. Eligible uses include:

- adding to an existing facility for use as a transportation museum;
- purchasing artifacts, displays, etc., relating to surface transportation;
- costs associated with stabilizing and restoring historic structure elements, interior and exterior; and
- constructing a new facility or preserving a historic building for use as a transportation museum.

3. Ineligible Uses. Ineligible uses include:

- operating and maintenance costs;
- aviation-related museum facilities, displays, artifacts, etc; and
- reconstruction, refurbishing or rehabilitation of existing museums, nor portions of museums that are not for transportation purposes.

4. Budget Considerations. Budget items for consideration include:

- |                                       |                             |
|---------------------------------------|-----------------------------|
| • architectural and engineering fees, | • ADA parking facilities,   |
| • environmental documentation,        | • landscaping,              |
| • permits,                            | • exhibits, and             |
| • project management,                 | • furnishing and equipment. |
| • construction costs,                 |                             |

### **1.3.8 Acquisition of Scenic or Historic Easements and Sites**

The primary purpose of this category is to preserve and protect scenic views and scenic or historic sites (including historic battlefields) in the view-sheds of the traveling public. This activity is intended to create an obvious improvement to the use of a transportation corridor by the traveling public, and to add to their enjoyment of the area. The sponsor must also guarantee the perpetual preservation of the scenic or historic value of the acquisition by placing the property or easement into public ownership. Consider the following:

1. Eligible Uses. Eligible uses include:

- acquiring land around a historic site;
- acquiring, donating or transferring land to develop vehicular pullouts at scenic or historic locations;
- planning and transaction costs (e.g., appraisals, surveys, legal costs) that lead to the purchase/protection of easements/properties; and
- acquiring, donating or transferring land that possesses significant aesthetic, natural, visual or open space values to preserve a scenic view-shed.

2. Ineligible Uses. Ineligible uses include:

- purchasing a historic site that will have no public benefit, and
- purchasing land where no development is anticipated in the foreseeable future.

3. Budget Considerations. Budget items for consideration include:

- planning and transaction costs (e.g., appraisals, surveys, legal costs) that lead to the purchase of easements/properties;
- land acquisition;
- construction of turnarounds and engineering costs associated with these designs;
- landscaping; and
- interpretative/directional signs and installation.

### **1.3.9 Archaeological Planning and Research**

This category includes transportation-related archaeological site preservation and interpretation, planning to improve identification, evaluation and treatment of sites, data recovery, research on sites, etc., which benefit the surface transportation system. Consider the following:

1. Eligible Uses. Eligible uses include:

- developing interpretive signs, exhibits and guides;
- experimental projects in archaeological site preservation and interpretation;
- researching sites as part of another CTEP project under a different category;
- stand-alone archaeological planning and research projects related to transportation; and

- planning associated with improving identification, evaluation and treatment of archaeological sites.
2. Ineligible Uses. Ineligible uses include:
- area-wide archaeological inventories or studies unrelated to surface transportation systems.
3. Budget Considerations. Budget items for consideration include:
- task background,
  - analysis,
  - environmental documentation,
  - report management,
  - excavation,
  - artifact processing, and
  - curatorial materials.

### **1.3.10 Environmental Mitigation and Wildlife Connectivity**

This category includes facilities and programs to minimize pollution from storm water runoff, in addition to current requirements and procedures for mitigation. Eligible activities in this category include developing programs to mitigate highway runoff pollution, and planning, designing and constructing mitigation facilities. These activities can be stand-alone projects or part of a larger existing or proposed project under other CTEP activities, as long as the activities are related to surface transportation.

This category also includes projects for the provision of wildlife connectivity. Examples are projects that would interconnect large areas with identified wildlife losses, especially losses of protected, threatened and/or endangered species on State or Federal designation lists.

Consider the following:

1. Eligible Uses. Eligible uses include:
- educational activities;
  - monitoring habitat fragmentation and vehicle-related wildlife mortality;
  - installing drainage facilities to restore or protect original drainage patterns;
  - bridge extensions to provide or improve wildlife passage or habitat connectivity;
  - creating wetlands, adding vegetated ditches, detention basins or other permanent filtering systems to filter highway runoff in a sensitive area; and
  - constructing or modifying wildlife underpasses, overpasses, wall openings, fencing or culverts in critical locations that facilitate wildlife crossings.

2. Ineligible Uses. Ineligible uses include:

- mitigation required pursuant to NEPA;
- installing fencing along roadways not known to have critical wildlife crossings;
- installing any facility (e.g., detention basin) where the Local Entity has not identified operating funds for required maintenance; and
- installing mitigating facilities where there is no wildlife or ecological habitat that has evidence of potential harmful effects of water pollution from highway runoff.

3. Budget Considerations. Budget items for consideration include:

- |   |  |
|---|--|
| • environmental consultant services (e.g., surveys, design, project supervision); | • native grasses and shrub riparian buffers (e.g., land preparation, plant materials, labor);  |
| • environmental documentation;  | • water management;  |
| • administrative fees;  | • in-stream constructed wetland (e.g., land-disturbing activities construction, planning); and |
| • project management;   | • information and education (e.g., signage, brochures).  |
| • geomorphic channel restoration;   |  |
| • water quality monitoring (e.g., equipment, testing, analysis);                  |  |

### **1.3.11 Pedestrian and Bicycle Safety and Educational Activities**

This category includes non-construction, safety-related activities and the reasonable costs to provide safety and educational activities. Proposals should reflect a definitive period for participation. The funded activities must be accessible to the public or targeted to a broad public segment. Local Entities using CTEP funds are encouraged to integrate safety messages and educational opportunities for bicyclists and pedestrians into enhancement projects through the development of campaigns, programs, educational materials including maps and brochures, and pedestrian and bicycle enforcement activities. Local Entities are encouraged to coordinate these activities with the National Highway Traffic Safety Administration and/or the MDT Bicycle and Pedestrian Coordinator. Consider the following:

1. Eligible Uses. Eligible uses include:

- bike/pedestrian safety training (e.g., cost of facilitators and classes);
- related training materials (e.g., brochures, videotapes, other training aids); and
- rent for leased space and limited staff salaries.

2. Ineligible Uses. Ineligible uses include:
  - long-term staff salary participation.
3. Budget Considerations. Budget items for consideration include:
  - safety training aids,
  - bicycle route brochures, and
  - safety training facilitators.

### **1.3.12 Control of Outdoor Advertising**

This category includes the inventory, control and removal of existing outdoor advertising signs, displays and devices, in addition to the requirement to exercise “effective control” of outdoor advertising under 23 USC 131. The outdoor advertising must be within the highway view-shed of a road with a functional classification of “limited/controlled access,” “arterial” or “collector” (but not “local”), unless the road is a State-designated Scenic Highway or a National Scenic Byway. Control and removal of outdoor advertising must accomplish a recognizable improvement to the scenic enjoyment of the traveling public. Expenditures made to remove signs, displays or devices must be made according to the MDT Right-of-Way Bureau criteria (e.g., appraisal). Consider the following:

1. Eligible Uses. Eligible uses include:
  - leasehold interest;
  - removing billboards from State-designated Scenic Highways or National Scenic Byways; and
  - costs associated with inventories, title research, planning, etc. (contingent upon actual billboard removal).
2. Ineligible Uses. Ineligible uses include:
  - removing billboards from local roads, and
  - removing billboards already designated for removal.
3. Budget Considerations. Budget items for consideration include:
  - appraisal costs,
  - lease hold costs,
  - acquisition costs,
  - legal fees,
  - lease fee costs, and
  - administrative costs.



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## Chapter 2

# PROJECT DEVELOPMENT

### 2.1 PROJECT ADMINISTRATION

#### 2.1.1 Program and Project Files

The Local Entity must retain complete documentation of all CTEP project activities. The Local Entity may be audited, so establishing and updating a well-organized file system is critical. By continuously updating program and project files, the Local Entity will ensure effective project management and documentation showing compliance with program requirements described in the *MDT CTEP Manual*.

Original and complete documentation for all files must be retained in the official offices of the Local Entity. These files need to be available during normal business hours to authorized personnel, including Federal and State representatives. Staff or consultants may also retain copies of key documents at a separate location.

The Local Entity should retain the following in their records:

- public involvement documentation;
- signed copy of the CTEP Project Application and MDT approval;
- Project Specific Agreement (PSA) between MDT and the Local Entity ([Chapter 1](#));
- copy of the advertisement requesting RFP/SOQ, documents used to select the consultant, the consultant's SOQ and the agreement between the Local Entity and the consultant (see [Chapter 5](#));
- environmental findings, reports, letters and approvals ([Chapter 4](#));
- right-of-way appraisal and acquisition documents (see [Chapter 6](#));
- Project Manual, including design computations, plan sheets, specifications, quantities, cost estimates and other bid documents (see [Chapter 7](#));
- bid advertisement, bid review documentation and the agreement between the Local Entity and the contractor ([Chapter 7](#));
- construction documents including preconstruction conference meeting notes, forms used in spot check interviews relative to the contractor's compliance with civil rights and labor standards, copies of the contractor's certified payrolls, change and extra work orders, etc. (see [Chapter 8](#));

- Certification of Completion;
- financial management records including payments received by the Local Entity from MDT and payments to the consultant, contractor and/or contracted services; and
- general correspondence relative to the CTEP project including letters and emails.

### **2.1.2 Project Schedule**

An important consideration in project management is the creation of a Project Development Schedule. The final schedule, which should be incorporated into the project management plan, should use monthly milestones for each task. The schedule should be monitored regularly to compare the actual work completed with the original planned schedule.

## 2.2 PROJECT DEVELOPMENT PROCESS

### 2.2.1 General

[Exhibit 2-1](#) illustrates the typical project development process for CTEP projects. The following activity descriptions correspond to the project development steps shown in [Exhibit 2-1](#). In addition, consider the following:

1. Precedence Activity. The flowchart is a precedence activity diagram. An “activity” occurs when a significant, discrete event occurs and/or when the responsibility for the project activity is transfer to/from MDT from/to the Local Entity. The “precedence” nature of the flowchart indicates that an activity cannot be started until the previous activities are complete. For example, the Local Entity must wait until it receives MDT project approval before it can begin the process of obtaining a consultant.
2. Project Application. The flowchart represents an approximate process for a complex CTEP project. Not every activity will be applicable to every project. For example, if the project does not involve the acquisition of right-of-way, the guidelines in [Activity 13](#) will not apply. The user should find that projects developed according to this process should have fewer management problems.
3. Activity Descriptions. The activity descriptions discussed in the following sections provide a brief summary of the events that occur in that activity. The user should review the other chapters in the *MDT CTEP Manual* for additional guidance.

### 2.2.2 Overview

The CTEP project development process consists of many steps that will take several months to complete. Local Entities should not expect to start work on their projects immediately after submitting the CTEP Project Application to the CTEP Section. When the CTEP Project Application is received, there will be a three to six month period during which the CTEP Section will review the Application for eligibility, obtain project approval from the Transportation Commission or MDT Rail, Transit and Planning Division Administrator, write the Project Specific Agreement (PSA), and finally, enter the project into the Federal Highway program. Only then can the CTEP Section give notice to the Local Entity to begin project activities. In short, Local Entities should plan ahead, allowing up to six months between project application submittal and the actual start of project design and construction.

After the CTEP Section gives the Notice to Proceed for the project, progress reports are required to be submitted to the CTEP Section no less than once every three months or with each request for reimbursement. For additional information on progress reports, see [Chapter 3](#).

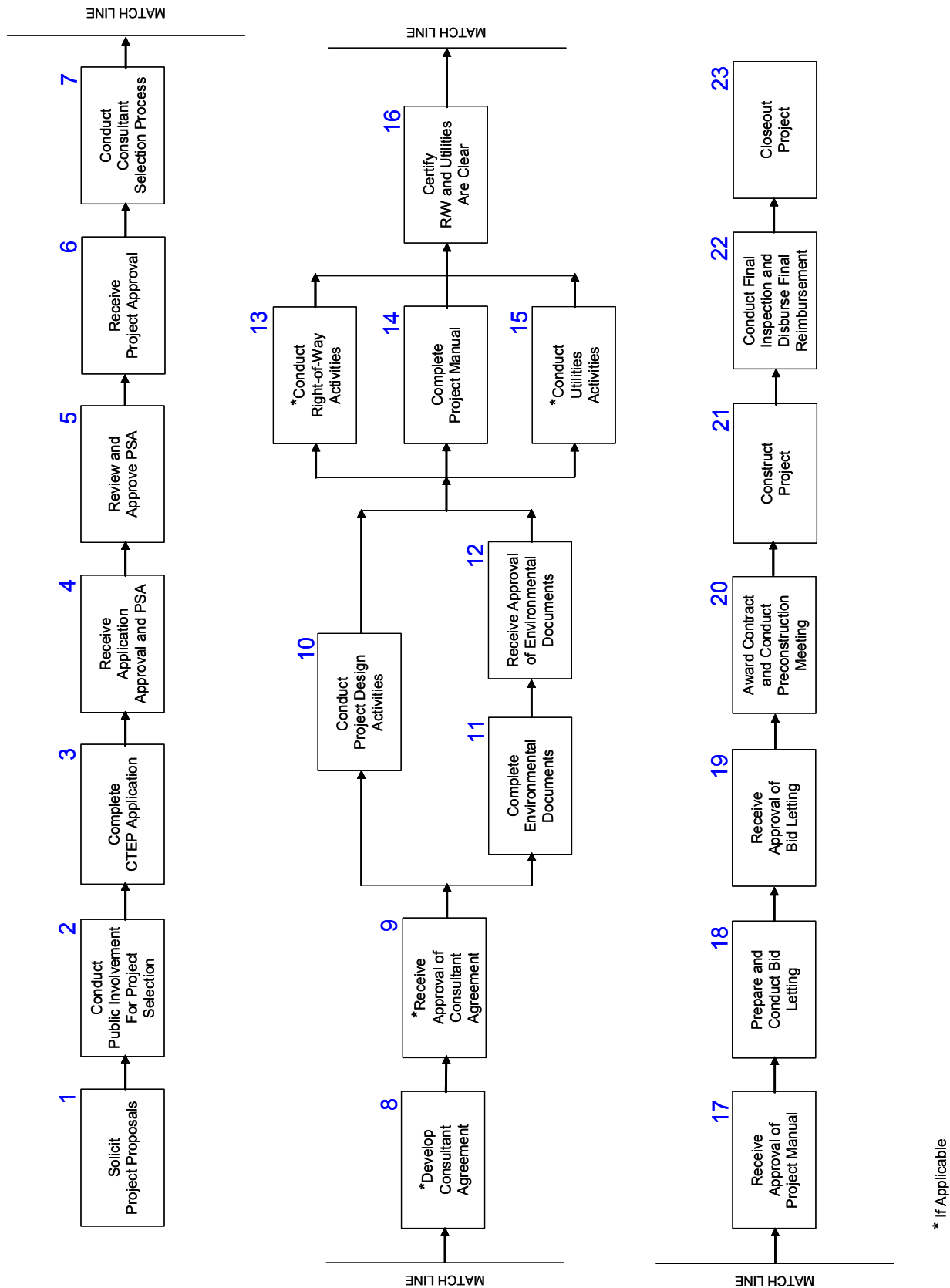


Exhibit 2-1– PROJECT DEVELOPMENT FLOWCHART

### **2.2.3     Activity 1 – Solicit Project Proposals**

Project proposals may be obtained from several sources, including the following:

- If the Local Entity has determined it has sufficient CTEP funds available, it may solicit the community, various local organizations and citizens for possible project ideas.
- Request for projects may come at the impetus of citizens and/or community groups. These may be in the form of petitions or requests during regularly scheduled meetings of the Local Entity.
- An identified need in a locally adopted transportation or capacity improvement plan.
- Other Local Entities may request combining or pooling resources to complete a project.
- Suggested projects may be provided by MDT, FHWA or other Federal and State agencies.

Selection of any CTEP projects must involve the public; see [Activity 2](#).

### **2.2.4     Activity 2 – Conduct Public Involvement for Project Selection**

FHWA and MDT strongly encourage citizen participation in selecting CTEP projects. As an applicant for Federal-aid CTEP funds, the Local Entity must hold local meetings and public informational meetings to solicit citizen comments when considering projects for selection. The Local Entity must provide the following:

- citizen participation opportunities;
- reasonable and timely access to local meetings, information and records relating to the use of proposed funds;
- technical support to groups requesting assistance in developing proposals;
- public meetings (with adequate notice, at convenient times and locations to potential beneficiaries and with accommodation for the disabled) to obtain citizen views and to respond to proposals and questions at all stages of project development;
- timely written responses to written complaints and grievances; and
- accommodations for non-English speaking residents.

Contact the CTEP Section with questions or ideas to enhance the public involvement process.

After reviewing the project concepts and proposals with the general public, considering citizen comments from the public participation, reviewing the CTEP categories and reviewing the

available project resources, the Local Entity will determine which CTEP projects, if any, to undertake.

### **2.2.5     Activity 3 – Complete CTEP Application**

The Local Entity will complete the CTEP Project Application for each project selected in Activity 2. A copy of this Application and instructions for completion and submittal are available on the [CTEP website](#).

In completing the Application, the Local Entity will need to consider:

- the appropriate CTEP category, see [Section 1.3](#);
- if the project can be designed and/or constructed using Local Entity employees; if not, the Local Entity will need to obtain a consultant and/or contractor;
- if right-of-way will need to be obtained, either by purchase or donation;
- estimated costs for the following project phases, see [Section 3.1.2](#) for a description of each of these categories:
  - + preliminary engineering (PE) (project design),
  - + right-of-way (ROW),
  - + incidental construction (IC) (utility involvement),
  - + construction (CN), and
  - + construction engineering (CE) (construction administration and inspection); and
- the share each Local Entity will provide when pooling CTEP funds.

After reviewing and approving the CTEP Project Application, the Application is signed by the Local elected officials and sent to the CTEP Section.

### **2.2.6     Activity 4 – Receive Application Approval and PSA**

Upon receipt of the CTEP Project Application, the CTEP Section reviews the Application for eligibility and available funding. In some cases, consultation with FHWA may be required.

After determining project eligibility, budget and fund availability, the District CTEP Project Notification package is distributed to the appropriate MDT District Administrator. If the proposed project is determined to be eligible, is expected to have no adverse impacts and local CTEP funds are available, the CTEP Section schedules the project for formal acceptance. Projects located on the State System must obtain the MDT Transportation Commission approval.

Projects located off the State Highway System will be approved by the MDT Rail, Transit and Planning Division.

After receiving the appropriate approvals, the CTEP Section prepares a Project Specific Agreement (PSA) and forwards it to the Local Entity for signature. A PSA defines the following:

- project budget, by account, detailing funding splits between Federal-aid funds, matching funds and additional contributions;
- project scope;
- project location;
- proposed method of development; and
- general terms and conditions associated with the program and budget.

For additional guidance on the PSA, see [Section 1.2.8](#).

Timeframe: 12 to 20 weeks

### **2.2.7 Activity 5 – Review and Approve PSA**

The Local Entity reviews the PSA and returns it to the CTEP Section with any proposed modifications or with signatures indicating acceptance.

Timeframe: 4 to 8 weeks

### **2.2.8 Activity 6 – Receive Project Approval**

Upon execution of the PSA, the CTEP Section will request funding approval from FHWA. Once FHWA approval is obtained, the CTEP Section will issue the Local Entity an “Authorization to Proceed.”

With the “Authorization to Proceed,” the Local Entity may begin incurring costs for the project development activities discussed in [Activities 7 through 19](#), excluding [Activities 13 and 15](#). If the project design work will be completed with the Local Entity forces, skip to [Activity 10](#). If a consultant is to be hired to conduct the preliminary design, the Local Entity can begin the RFP/SOQ process. See [Chapter 5](#) for a detailed discussion on obtaining a Consultant.

Timeframe: 4 to 8 weeks

**2.2.9     Activity 7 – Conduct Consultant Selection Process**

The consultant selection process is described in [Chapter 5](#) which details the following steps:

1.     determine need for consultant,
2.     issue/advertise RFP,
3.     review and evaluate proposals,
4.     select consultant, and
5.     conduct negotiations.

Timeframe:    6 to 12 weeks

**2.2.10   Activity 8 – Develop Consultant Agreement (if Applicable)**

After advertising a RFP/SOQ and selecting the consultant, the Local Entity will work with the consultant to develop a scope of work plan, cost estimate and schedule for the CTEP project. Based on this concurrence, the Local Entity will prepare a consultant agreement for signature by the Local Entity and the consultant. Prior to submitting the agreement to the consultant, the Local Entity will submit the consultant agreement to the CTEP Section for review and comment.

An example contract agreement is provided in [Exhibit 5-5](#). This document is also available electronically from the [CTEP website](#).

Timeframe:    4 to 12 weeks

**2.2.11   Activity 9 – Receive Approval of Consultant Agreement (if Applicable)**

The CTEP Section conducts a compliance review (e.g., requirements review) of the draft consultant agreement and provides comments and approval (if applicable) to the Local Entity. If the consultant agreement is acceptable, the CTEP Section issues authorization to the Local Entity to proceed with the project design activities. For additional guidance, see [Chapter 5](#).

Timeframe:    2 to 4 weeks

**2.2.12   Activity 10 – Conduct Project Design Activities**

After receiving project approval from the CTEP Section in [Activity 6](#), the Local Entity can begin conducting the project design activities or authorize the consultant to proceed with the project design activities; see [Chapter 7](#). Project design activities may include the following:

- conducting field surveys;
- meeting with Local Entity officials and other public groups;

- determining the appropriate design criteria and, if applicable, obtaining a design exception;
- identifying *Americans with Disabilities Act* (ADA) considerations;
- conducting applicable design studies; and
- preparing the project design including preparing project plan sheets, specifications, quantities, cost estimate, etc.

All project design documents will be submitted to the CTEP Section for review and approval in [Activity 17](#).

Timeframe: 12 to 20 weeks

### **2.2.13 Activity 11 – Complete Environmental Documents**

All CTEP projects must include an environmental review and the necessary environmental documents completed. [Chapter 4](#) describes the environmental requirements for CTEP projects that must be followed. If the project requires environmental documentation other than a Categorical Exclusion, the Local Entity should immediately stop work and contact the CTEP Section.

The Local Entity will submit the environmental documents to the CTEP Section for review. The CTEP Section and/or FHWA may issue comments on the environmental documents, which will need to be incorporated or addressed. No construction or right-of-way costs can be incurred until after the environmental document is fully executed and approved.

Timeframe: Approximately 4 weeks

### **2.2.14 Activity 12 – Receive Approval of Environmental Documents**

If the environmental determination is acceptable to the CTEP Section and FHWA, the CTEP Section will distribute the environmental documents to the appropriate Federal and State agencies. MDT approval authorizes the Local Entity to proceed with right-of-way activities ([Activity 13](#)), Project Manual development ([Activity 14](#)) and utility activities ([Activity 15](#)).

Timeframe: Approximately 2 weeks

### **2.2.15 Activity 13 – Conduct Right-of-Way Activities (if Applicable)**

If applicable, the Local Entity will conduct the following right-of-way activities:

- right-of-way determination,
- preacquisition,
- appraisal,
- acquisition, and
- relocation.

For details on the right-of-way process, see [Section 6.2](#).

Timeframe: Varies dependent on the complexity of the right-of-way activities.

### **2.2.16 Activity 14 – Complete Project Manual**

The Project Manual is the combined bid package of the project plans, quantities, specifications, and other contract documents that are distributed to bidders. A separate Engineer's Estimate of Cost should also be prepared. The Local Entity should submit the Project Manual documents and cost estimate to the CTEP Section for review and approval. For more information on the Project Manual, see [Section 7.3.5](#).

Timeframe: 4 to 8 weeks

### **2.2.17 Activity 15 – Conduct Utility Involvement (if Applicable)**

If applicable, the Local Entity will conduct or oversee utility involvement activities. There may be occasions where utilities must be relocated to construct a CTEP project. An agreement must be made between the Local Entity and utility company establishing who is responsible for relocating the utility and, if any payment is required, the agreement will indicate the amount the Local Entity will pay the utility company. For more information in utility involvement, see [Section 6.3](#).

Timeframe: Varies dependent on the complexity of the utility activities.

### **2.2.18 Activity 16 – Certify Right-of-Way and Utilities Are Clear (if Applicable)**

If Federal funds are used to acquire right-of-way, the MDT Right-of-Way Bureau must certify that the acquisition conforms to the right-of-way process described in [Section 6.2](#). The certification includes review of the appraisal and related documents. The MDT Right-of-Way Bureau will issue the certification to the CTEP Section.

Similar to right-of-way, if a CTEP project includes placement or relocation of utilities in MDT-owned right-of-way, the MDT Utilities Section must certify that the placement or relocation conforms to the utilities guidelines described in [Section 6.3](#). The MDT Utilities Section will issue the certification to the CTEP Section.

Timeframe: 2 to 4 weeks

**2.2.19    Activity 17 – Receive Approval of Project Manual**

The CTEP Section reviews the Project Manual documents for compliance with Federal, State and MDT regulations. If all documents are acceptable, approval is given to the Local Entity to prepare and conduct bid letting ([Activity 18](#)).

Timeframe:    2 to 6 weeks

**2.2.20    Activity 18 – Prepare and Conduct Bid Letting**

After receiving approval of the Project Manual from the CTEP Section, the Local Entity can prepare and conduct bid letting activities. Bid letting activities include the following:

- advertising the project for a minimum of 3 weeks for construction costs exceeding \$50,000;
- reviewing and evaluating the bids;
- selecting a contractor for award; and
- submitting the contract award recommendation to the CTEP Section.

The bid letting process is described in detail in [Section 7.4](#).

Timeframe:    4 to 8 weeks

**2.2.21    Activity 19 – Receive Approval of Bid Letting**

The CTEP Section reviews the Local Entity's bid letting process and selection of the contractor. This review involves checking the debarred list, bid tabs and bid review certification form. Once the review is completed, the CTEP Section will issue an authorization to proceed with construction to the Local Entity. For more information on bid letting, see [Chapter 7](#).

Timeframe:    Approximately 2 weeks.

**2.2.22    Activity 20 – Award Contract and Conduct Preconstruction Meeting**

The Local Entity issues the "Notice of Award" and a contract agreement to the successful bidder. The successful contractor reviews and signs the contracts and submits them to the Local Entity along with performance and payment bond information, contractor registration number and proof of insurance, including workers compensation. The contractor should also furnish copies of the annual EEO certifications for the Contractor's company and for all subcontractors that will work on the project.

After receipt of these documents, the Local Entity issues the “Notice to Proceed,” schedules the preconstruction conference and invites the MDT District Liaison to discuss, at a minimum, civil rights and prevailing wage rate requirements. For more information on contract award and conducting a preconstruction meeting, see [Section 8.2.3](#).

Timeframe: 4 to 6 weeks

### **2.2.23 Activity 21 – Construct Project**

Project construction involves monitoring the following:

1. Contract Monitoring. Contract monitoring involves ensuring the contractor maintains a job bulletin board, conducting spot check interviews, Disadvantaged Business Enterprise (DBE) monitoring, maintaining compliance with certified payrolls, making contractor payments, submitting monthly invoices, etc. For more information on contract monitoring, see [Section 8.2.4](#).
2. Construction Monitoring. Construction monitoring includes materials acceptance, inspection, etc. For more information on construction monitoring, see [Section 8.2.5](#).

For more information on project construction, see [Chapter 8](#).

Timeframe: Varies depending upon the size and complexity of the project.

### **2.2.24 Activity 22 – Conduct Final Inspection and Disburse Final Reimbursement**

At project completion, the Local Entity is responsible for conducting a final inspection to ensure that the work is complete and conforms to the plans and specifications. The MDT District Liaison should be invited to join the Local Entity in the final inspection. Additionally, the Local Entity must ensure that all Federal and State requirements (e.g., labor standards) have been satisfied and all contract files are complete.

If the final project inspection is acceptable, the Local Entity will conduct the following:

1. Certificate of Completion. Prepare, sign and submit a Certification of Completion to the MDT CTEP Project Manager. [Exhibit 8-15](#) provides a sample of the Certificate of Completion. An electronic copy of this certificate is also available on the [CTEP website](#).
2. Final Reimbursements. With the Certification of Completion, request the contractor to submit the final invoice for payment. After receiving the contractor’s final invoice, request the final reimbursement from the CTEP Section. The CTEP Section will process the Local Entity’s final reimbursement request and initiate the final voucher process with FHWA.

Timeframe: 2 to 4 weeks

**2.2.25    Activity 23 – Closeout Project**

After the final project inspection and review is complete, the Local Entity circulates the Certification of Completion to appropriate individuals for signature and submits it to CTEP Section. Once the CTEP Section approves the Certification of Completion, the project is considered closed.

Timeframe:    8 to 12 weeks



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## Chapter 3

# FISCAL MANAGEMENT

### 3.1 OVERVIEW

This Chapter provides guidance on the Federal and State requirements that govern fiscal management of CTEP projects.

#### 3.1.1 CTEP Funding

##### 3.1.1.1 Annual Funding

MDT will annually notify each Local Entity of the yearly Federal-aid funding amount that has been allocated to them and the current balance available for CTEP projects. This notice is distributed annually and includes any balance remaining from previous years. The dollar amounts contained in each Local Entity's CTEP account represent a not-to-exceed amount.

##### 3.1.1.2 Project-Specific Funding

After MDT approves the CTEP Project Application and executes the Project Specific Agreement (PSA), a Federal-aid Project Authorization and Agreement is requested from FHWA. Once FHWA has approved the project, CTEP funds are assigned to the project and the amount is subtracted from the Local Entity's CTEP fund balance. For additional guidance on CTEP funding, see [Section 1.2](#).

#### 3.1.2 Project Accounts

To comply with Federal regulations, MDT requires the Local Entity to designate separate accounts for the various CTEP project development phases (e.g., design, right-of-way, construction). The Entity must provide a reasonably accurate estimate for each account in its CTEP Project Application. The CTEP Section will submit a request to FHWA to fund each account amount based on the Local Entity's proposed budget stated in the Project Specific Agreement (PSA). The Local Entity should carefully evaluate all expenses so that a reasonably accurate amount, supported by a documented cost estimate, can be requested from FHWA. For all accounts, the amount requested may be revised later in the project to reflect a more accurate cost estimate based on the project design and any negotiated agreements (e.g., consultant services agreement, construction contracts). The various funding accounts that can be used for CTEP projects are described below:

1. Preliminary Engineering (PE) (Design Engineering). This account is for the costs associated with the environmental review process; design of the project; preparation of the project plans, specifications and estimate (PS&E); and the contract letting process. It does not include any cost associated with construction activities.
  - a. Eligible PE Expenses. PE expenses can include:
    - costs associated with advertising of the Request for Proposals (RFPs) and Request for Quotes (RFQs),
    - consultant services,
    - incidental right-of-way costs,
    - coordination and administrative costs associated with negotiation of an agreement with the utility company, and
    - staff time spent on administering the bid letting process.
  - b. Ineligible PE Expenses. PE expenses which are not allowable include:
    - planning that is integral to the development and design of a project,
    - the Local Entity's staff time and costs related to the preparation and distribution of requests for RFPs and Statement of Qualifications (SOQs),
    - staff evaluation of responses,
    - staff time spend administering the consultant contract, and
    - prior planning studies undertaken to identify a specific project.
2. Right-of-Way (ROW) (Purchase and Lease of Property). This account is only for the actual procurement of property, easements and permits. Related expenses incidental to the actual procurement of the ROW (e.g., surveying, appraisals, transfer and recording fees, attorney fees, supporting documents) should be charged to the PE account. The environmental document must be completed before any ROW can be acquired for the project. See [Chapter 6](#) for more information on ROW activities. Once the acquisition and relocations costs have been determined, the CTEP Section will enter into an agreement with FHWA for a fixed, not-to-exceed ROW cost amount.
3. Incidental Construction (IC) (Utility Involvement). This account funds construction expenses associated with the relocation of existing utilities. This work is considered to be incidental to the construction of the project. The Local Entity should consider the following:

- The IC account pertains to publicly, privately or cooperatively owned utility lines and systems for producing, transmitting or distributing communications, power, electricity, light, gas, oil, crude products, water, steam, waste, storm water not connected with roadway drainage and/or any similar commodity.
- The IC account may be used to relocate, adjust or modify existing railroad facilities required as a result of the CTEP project.
- If the utility is located on the Local Entity or MDT right-of-way, the utility company may be responsible for all costs associated with the relocation of the utility. The Local Entity should coordinate with the CTEP Section to determine who is responsible for the relocation expenses.
- Costs related to relocation of MDT facilities (e.g., traffic signals, street lights) will be covered under the Construction Account (CN).
- The environmental document must be completed before performing the actual relocation of the utility.

If the final agreement amount is greater than originally authorized, the Local Entity must request the CTEP Section to apply for an adjustment in the IC account from FHWA.

4. Construction Engineering (CE) (Construction Administration/Inspection). This account funds the administration activities that occur after the Local Entity is notified by MDT of concurrence in the award of a construction contract. Eligible CE activities include construction contract administration, construction engineering, construction staking, inspection and quality assurance testing. If the Local Entity elects to use a consultant to assist with the construction engineering services, the CE funding requested from FHWA will normally be the amount in the consultant contract; plus any advertising costs incurred by the Local Entity in procuring the consultant. If the Local Entity has elected to include construction engineering services in an earlier contract used to procure consultant services in the design development phase of the project's development (PE), then the CE account authorization from FHWA is also requested at that time. Otherwise, it is requested after MDT approval of the Project Manual.
5. Construction (CN) (Contracted Construction or Procurements). This account covers all labor, materials and equipment costs associated with the actual project construction. This may include procurement of materials for force account work, small contracts or competitively bid construction contracts. The environmental document must be completed before MDT will authorize the Local Entity to begin construction activities. The funding requests presented in the CTEP Project Application are modified by MDT/FHWA to reflect the actual bid award.

Reimbursement requests for any amount greater than the actual bid award must first be approved by the CTEP Section. Any solicitation expense or construction-related

procurement contract(s) that are entered into or any work performed before construction authorization is received from the CTEP Section will be ineligible for CTEP funds.

6. Other (OT) (Non-Construction Items). This account is used for special projects when no actual construction takes place (e.g., public education, training, highway advisory radio, brochures, tourist information, culture resource inventories). A case-by-case negotiation is conducted with FHWA for each project classified as an OT activity.

To eliminate confusion, Local Entities should adopt this account naming convention to create separate funding accounts for each CTEP project.

### **3.1.3 Federal-Aid Programming**

After the PSA and the Federal-aid programming are in place, Local Entities must comply with the following:

- Only expend the funds in accordance with the provisions of the PSA.
- Formally modify the PSA if the total project budget is estimated to change significantly. This will be determined by the CTEP Section.
- The project scope, location and account budgets may be amended as long as they do not violate the conditions under which the project was approved and the Local Entity has available funds.
- Request and obtain written approval from MDT if the dollar amount in any individual budget account is expected to be exceeded.
- Ensure additional funds (e.g., Federal, State, local, other) are available before authorizing expenditures beyond the amounts specified in the PSA or Federal programming documents.
- MDT must approve, in writing, revisions to the scope of work and/or project location. Local Entities must evaluate the effect the proposed changes have on the environmental review to determine if additional action is required.
- Request a Federal-aid program revision to reflect any change in location, scope of work or method of construction (e.g., force account).

### 3.2 MATCHING FUNDING SOURCES

The following Sections describe some of the possible funding sources available for matching the Federal CTEP funds. The Local Entity may combine one or more of these sources to fund their portion of the CTEP project.

#### 3.2.1 Local Funding Sources

The following are possible local funding sources:

1. Local General Funds. Local general funds refer to all funds received by the Local Entity through property tax, income tax, sales tax and other taxes assessed by the Entity. A portion of these funds may be allocated to CTEP projects at the discretion of the Entity.
2. Bonds. Any Entity may finance a CTEP project with the proceeds of a bond issue and request the use of the funds for payment of principal and interest when retiring the bond. Payment of the bond must come from other local funding sources described in this Section.
3. Special Assessments. A special assessment is a fee for CTEP projects that is levied against properties benefiting from the project (e.g., sidewalk assessment). The fee consists of principal and interest and is usually paid over 20 years. The interest rate paid by the property owner coincides with the interest rate and maturity date for the bonds that are sold to finance the project.
4. Impact Fees. Local Entities have the authority to adopt and implement impact fee ordinances and resolutions. Impact fees are charges imposed by Local Entities as a condition to the issuance of a building permit in connection with new development. Any portion of the revenues collected may be used to fund a CTEP project.
5. Private Funds. Private cash donations, charitable donations and other private sources of funding (e.g., fundraisers) are eligible for matching CTEP funds.

#### 3.2.2 State and Federal Funds

The following are possible State and Federal funding sources:

1. Recreation Trails Grant. The Recreational Trails Program (RTP) is a Federal assistance program administered by the Montana Department of Fish, Wildlife and Parks (DFWP). Federal transportation funds are available to State agencies and Local Entities to develop and maintain recreational trails and trail-related facilities for both non-motorized and motorized recreational trail uses. RTP funds come from the Federal Highway Trust Fund, and represent a portion of the motor fuel excise tax collected from non-highway recreational fuel use (e.g., fuel used for off-highway recreation by snowmobiles, all-terrain vehicles, off-highway motorcycles, off-highway light trucks). Contact Montana's

RTP Administrator in the DFWP for guidance on Montana policies and project eligibility requirements.

2. US Fish and Wildlife Service (FWS) Grants. FWS provides Federal grants to States and Local Entities for land acquisition through the following sources:
  - Habitat Conservation Planning Land Acquisition,
  - Cooperative Endangered Species Conservation Fund, and
  - *North American Wetlands Conservation Act.*
3. Other Funding. Other funding sources may be available depending on the project type and Local Entity.

### 3.2.3 Soft Funds

In some instances, Local Entities may use “soft” funds as local matching funds. Local Entities should indicate their intent to use soft funds in the project application. The MDT CTEP Project Manager will work with the Entity to determine the suitability and value of the soft match. MDT and FHWA must concur with the estimated value of the soft match before it can be used on a CTEP project. Soft funds may include the following:

1. Donated Materials. Local Entities may use acceptable materials to match CTEP funds (e.g., gravel, lumber, landscaping items). These materials must meet construction specifications and be approved by the MDT CTEP Project Manager prior to being incorporated into the project. The value of these materials will be determined using fair market values.
2. Donated Equipment. Local Entities may include the value of donated equipment to match CTEP funds, as approved by the MDT CTEP Project Manager. The value of the equipment time will be established using MDT hourly rate schedules. It is the responsibility of the Local Entity to keep accurate records of actual equipment use time.
3. Donated Land or ROW. Local Entities may use the value of donated land required for the project right-of-way to match CTEP funds. The fair market value of the property must be determined by a property appraisal, or other means acceptable to MDT and FHWA. The property owner must be notified of their right to receive compensation for the property; see [Chapter 6](#).
4. Volunteer Labor. Generally, donated labor will not be accepted as local match for CTEP funds. Reasons for not accepting donated labor include:
  - the difficulty in determining appropriate wage rates,
  - the need for proper supervision and record keeping by the Local Entity, and
  - potential liability issues for the Local Entity and MDT.

If use of soft funds is approved, the Local Entity must retain all supporting documentation, including fair market value determinations, and must keep accurate records of all donated materials quantities and equipment use time for the project.

### **3.3 ADMINISTRATION**

#### **3.3.1 Applicable Federal and State Requirements**

##### **3.3.1.1 Federal Requirements**

Local Entities must comply with the following Federal requirements embodied in the following Office of Management and Budget (OMB) circulars and USDOT/FHWA regulations:

1. OMB Circular A-87, Cost Principles for State, Local and Indian Tribal Governments. This circular establishes the principles and standards for determining costs for Federal awards carried out through grants, cost reimbursement contracts and other agreements with State and local governments and Federally-recognized Indian Tribal Governments.
2. 23 CFR, Chapter 1, Highways. The purpose of these regulations is to implement and carry out the provisions of Federal law relating to the administration of Federal-aid for highways.

##### **3.3.1.2 State Requirements**

Local Entities must comply with the following State of Montana regulations and requirements:

1. Accounting Methods. Local Entities are required to follow accounting and reporting requirements as described in State law *MCA 2-7-504*.
2. Budgetary Authority. Local Entities are required to appropriate, by resolution, all funds received, regardless of the time of receipt. The resolution should state the source of the funds, the program in which they will be expended and the effective date of the appropriation (*MCA 7-6-4006*).
3. Indirect Cost Allocation Plan (ICAP). MDT is required by State law to identify and recover indirect costs associated with administration of projects using non-general funds (*MCA 17-1-106*). Federal-aid funds, as well as the required local matching funds, are subject to recovering MDT indirect cost charges. After reimbursements of the Federal share are made to the Local Entity, MDT will submit an invoice to the Local Entity for the indirect costs associated with the local matching share. The Local Entity is required to submit the payment to MDT (i.e., MDT will not withhold the local share of indirect costs from the Federal reimbursement).

Local Entities may also recover indirect costs associated with CTEP projects, if they so choose. In order to recover these indirect costs, the Local Entity must develop an indirect cost rate in accordance with OMB Circular A-87 and provide MDT with evidence that the rate has been audited and Federally approved within the last year.

### 3.3.2 Cost Reimbursement

Submit reimbursement requests once a month (at most) for each project. Reimbursement may only be requested after expenses have been incurred. Include the following in the reimbursement request:

1. Cover Letter. Submit a signed cover letter indicating the following:
  - total expenses incurred and amount of CTEP fund reimbursement expected,
  - total funds remaining on the consultant or contractor contract,
  - certification that the work has been satisfactorily completed, and
  - to whom and where the warrant must be mailed.

See [Exhibit 5-7](#) for an example of a Local Entity invoice.

2. Supporting Invoices. Attach copies of all supporting invoices from the consultant, vendor, contractor, etc., to the cover letter. See [Exhibit 5-6](#) for a sample consultant invoice.
3. Progress Report. Every request for reimbursement must include a progress report. Furnish to the CTEP Section a brief narrative progress report at the time of the monthly request for reimbursement showing the status of the work on the project. The report should cover all phases of work accomplished during the period of the report and show the percentage of work completed for each phase of the project. Identify any issues that may have adversely affected the progress of the work. If a consultant is used, the progress report from the consultant can be used to compile the Local Entity progress report. See [Chapter 5](#) for information on consultant progress reports. At least one progress report must be submitted to the CTEP Section every three months whether or not a reimbursement request has been made.

Reimbursement requests for construction (CN) and utility involvement (IC) account expenses must come through the MDT District Liaison. The MDT District Liaison will certify that the work has been completed or the materials have been procured by submitting the reimbursement request to CTEP Section with an Approved for Payment stamp or signature added to the request. The Liaison is not responsible for determining if the work or items are eligible; they are simply providing an independent certification that the items have been procured or that the work has been done.

Local Entities should expect reimbursement of funds within 30 calendar days from the date of receipt by MDT.

### **3.3.3 Revisions and Account Modification Requests**

When project costs are expected to exceed the programmed amount or where there are changes to the proposed scope of work, the Local Entity is required to submit a request to the CTEP Section to modify the affected account. Note that FHWA will not reimburse funds in excess of an account's agreement amount unless a modification request has been approved. The proposed program revision and account modification request procedures must specify which program (CTEP project name and number) and account(s) (e.g., PE, CN, CE) are to be modified and the nature of the proposed modification or revision.

Proposed modifications that increase the total project budget (defined in the PSA) significantly may require a modification to the PSA. The CTEP Section will make this determination. Minor modifications or revision can be made without a formal modification of the PSA. However, they must still receive MDT approval.

Changes to the scope of work and project location should be referred to as a "Revision." The proposed revision should describe the change and the reason for the request. These revisions may require the Entity to re-evaluate and revise the budget and environmental review record accordingly. These revisions may also require a modification of the PSA. The CTEP Section will make this determination on a case-by-case basis.

### **3.3.4 Records Retention**

Retain the following items for three years after the project is officially closed out:

- all payment and purchase documents (e.g., receipts, purchase orders, invoice statements, claims, checks, warrants);
- accounting records (e.g., accounting, budgetary, payroll, time and bank statements);
- financial reports (e.g., financial summary and request for reimbursement, financial reports, payroll, progress reports, payment certification); and
- any other monetary documentation (e.g., budgetary resolutions).

These items are subject to applicable Federal, Montana and local laws relating to public access, privacy and confidentiality.

### **3.3.5 General Accounting Requirements**

Local Entities must maintain accurate accounting records that:

- identify the source and application of funds provided for Federal-assisted activities,
- contain information pertaining to the project's assets and expenditures, and

- provide adequate assurance that Federal funds were used solely for the authorized purposes.

To ensure compliance with Federal regulations, MDT reserves the right to conduct audits of the Local Entity's accounting records. Questions regarding standards of accountability should be directed to the Montana Department of Administration.

For questions regarding audits, Local Entities should contact the CTEP Section or the Montana Department of Administration at:

Local Government Services Bureau  
Room 340, Park Avenue Building  
PO Box 200547  
Helena, MT 59620-0547

When a project is audited, often times the accounting firm performing the audit is unaware of the Code of Federal Domestic Assistance (CFDA) number for the program. The CFDA number for the CTEP program is 20.205 – Highway Planning and Construction (Federal-aid Highway Program).



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## Chapter 4

# ENVIRONMENTAL ANALYSIS

### 4.1 ENVIRONMENTAL PROCESS

#### 4.1.1 Overview

All CTEP projects must comply with the *National Environmental Policy Act* (NEPA). NEPA establishes national policy, goals and procedures for protecting, restoring and enhancing environmental quality. Federal regulations for NEPA compliance with Federal-aid programs are found in 23 *CFR* 771.772 and 777 and 40 *CFR* 1500-1508. For more information on NEPA, visit the FHWA website. CTEP projects are also subject to the *Montana Environmental Policy Act* (MEPA) of 1971, which is located on the MDT website.

The environmental review process is a critical component in the development of CTEP projects. Until the environmental requirements have been satisfied and approved by MDT and FHWA, no project expenses beyond the design stage may be incurred (e.g., advertisement and award, construction, utility involvement and right-of-way acquisition).

Environmental documentation is required in order to proceed with project development. Environmental documentation may involve the preparation of a Categorical Exclusion, Environmental Assessment (EA) or an Environmental Impact Statement (EIS). Environmental impacts associated with CTEP projects should only require a Categorical Exclusion. If the environmental impacts exceed those covered by a Categorical Exclusion, the Local Entity should contact the CTEP Section. See [Section 4.1.7](#) for more information on environmental documentation.

The MDT environmental review process for CTEP projects consists of the following steps:

1. obtain MDT authorization to begin design,
2. designate the Environmental Certifying Official,
3. review environmental impacts with the Environmental Checklist, and
4. prepare the necessary Environmental Documentation.

Details for each step are provided in the following Sections.

#### 4.1.2 MDT Authorization

Local Entities must wait for MDT to issue a written Notice to Proceed (NTP) before incurring costs for design and engineering activities (e.g., consultant selection, survey, design, environmental reviews).

Costs associated with the design and engineering activities are the only costs that can be incurred prior to the approval of the environmental documentation. After environmental approval, funds may be released for bid letting, construction, utility relocation and/or right-of-way acquisition.

#### **4.1.3     Environmental Certifying Official**

Local Entities must designate an Environmental Certifying Official who is responsible for environmental review activities and environmental document preparation. See [Exhibit 4-2](#) for a sample of the “Designation of Environmental Certifying Official” form. An electronic version of this form is also available on the [CTEP website](#).

The Environmental Certifying Official must be capable of explaining the information provided to the public or MDT as part of the environmental review process. This individual must be an employee or elected official of the Local Entity.

#### **4.1.4     Environmental Checklist**

The Environmental Certifying Official must present evidence that the project activities meet all environmental requirements. This is achieved by completing the Environmental Checklist. The Environmental Checklist includes a format and index of applicable Federal laws and regulations. A sample checklist is provided in [Exhibit 4-3](#). An electronic version of this checklist can be downloaded from the [CTEP website](#).

By completing the checklist, the Environmental Certifying Official will need to consider the effects of the project on a variety of environmental concerns. For each environmental “impact category” (e.g., historic properties, floodplain management, wetlands), the Environmental Certifying Officer must determine which of the following conditions apply:

- not applicable to the project;
- further consultation is required;
- additional review is required;
- a permit/permits are required and has been, or will be, obtained; or
- compliance with conditions and/or mitigation actions is required.

The Environmental Certifying Officer should retain all supporting documentation (e.g., letters, test results, maps, notes from authorities, phone logs, emails) when completing the checklist. If situations arise that require additional consultation, contact the appropriate Federal or State agency. Consultation results in one of the following outcomes:

- no additional review of the requirements is necessary,
- conditions are placed on the Local Entity, or
- the project is halted until mitigating measures are identified and compliance is achieved.

If permits are required, they should be listed by their proper name and attached to the Environmental Checklist. If mitigating actions are required, the Environmental Certifying Officer should detail the course of action planned to ensure compliance.

#### **4.1.5 Environmental Impacts**

The following Sections describe the various environmental impact categories that must be considered. If there is a local, regional or other environmental controversy, it must be addressed in the environmental documentation. Explain the nature of the controversy and the necessary steps required to resolve each issue. The environmental documentation will also need to identify any inconsistencies with Federal, State or local laws or regulations relating to the environmental aspects of the action. Carefully consider all environmental requirements and ramifications.

##### **4.1.5.1 Biological Resources**

Local Entities are responsible for determining if the project will impact a biological resource. Biological resources include streams, wetlands or other habitats containing sensitive species that nest, forage or inhabit the area. A list may be obtained from the Montana Department of Fish, Wildlife and Parks. The US Fish and Wildlife Service and the Montana Natural Heritage Program at the Montana State Library also maintain lists of sensitive, threatened or endangered species and their general locations. If the project will impact a biological resource, identify the impacts and any appropriate mitigation measures in the project's environmental document. Any questions related to biological resources or the Federal law may be directed to the US Fish and Wildlife Service.

##### **4.1.5.2 Wetlands**

Local Entities are responsible for determining if the proposed project will impact any wetlands. For a definition of wetlands, contact the US Army Corp of Engineers. Reasonable efforts must be made to avoid impacting wetlands in compliance with Executive Order 11990, which states that Federally-funded projects must "avoid to the extent possible the long and short term adverse impacts associated with the destruction or modification of wetlands, where there is a practicable alternative." Some CTEP projects may be required to mitigate any wetland impacts.

##### **4.1.5.3 Floodplains**

Local Entities are required to determine if the project is located in or will affect a floodplain area. Projects within delineated floodplains must be designed in accordance with Executive Order 11988 (23 *CFR* 650.101-650.117); a copy of this Order is available at the Montana State Law Library. The County, under Federal flood insurance provisions, is required to delineate floodplains within the county. For a floodplains map and a copy of the regulations, contact the appropriate County Office.

If assistance is needed in determining if the project is located in or would affect a floodplain, contact the Floodplain Management Section at the Montana Department of Natural Resources and Conservation. Contact information is located in [Exhibit 4-4](#).

#### **4.1.5.4 Farmlands**

The purpose of the *Farmland Protection Policy Act* (FPPA) is to minimize the extent to which Federal programs contribute to the unnecessary and irreversible conversion of farmland to nonagricultural uses, and to ensure that Federal programs are administered in a manner that, to the extent practicable, will be compatible with State, Local Entities and private programs and policies to protect farmland.

The FPPA requires that before taking or approving any action that would result in conversion of farmland as defined in the *Act*, the Local Entity examines the effects of the action using the criteria set forth in the rule and, if there are adverse effects, consider alternatives to lessen them. Details on conducting an assessment on farmland impacts due to highway improvements can be found in 7 *CFR* 658.

If assistance is needed in determining if the project is located on or would affect farmlands, contact the Natural Resource Conservation Service (NRCS).

#### **4.1.5.5 Environmental Justice**

Executive Order 12898 “Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations” serves to re-emphasize the requirement to assess and consider the impacts of transportation projects on people and communities, and pro-actively engage all people in public involvement activities in program planning as well as project development. See [Section 4.2](#) for guidance in applying environmental justice to transportation projects.

#### **4.1.5.6 Section 4(f)**

A Section 4(f) evaluation is required when a project may have impacts to a Section 4(f) resource. Section 4(f) resources include any publicly owned park, recreation area, wildlife or waterfowl refuge or any publicly or privately owned historic site.

Before approving a project that “uses” a Section 4(f) resource, FHWA must find that there is no prudent and feasible alternative and that the selected alternative minimizes harm to the resource. If there is a prudent and feasible alternative that completely avoids 4(f) resources, it must be selected. If there is no prudent and feasible alternative that avoids 4(f) resources, FHWA has some discretion in selecting the alternative that causes the least harm to 4(f) resources.

The Local Entity is responsible for determining if the project will impact Section 4(f) properties. If the proposed project would change the existing use of a 4(f) property, an alternative analysis must be completed. Details on conducting this analysis can be found in 23 *CFR* 771.135.

[Section 4.1.7.4](#) provides guidance on the required documentation for Section 4(f) evaluations.

#### **4.1.5.7 Section 6(f)**

Local Entities are required to determine if the project will impact Section 6(f) properties. Section 6(f) properties are protected properties, for public outdoor recreation, acquired or developed with Land and Water Conservation Funds (LWCF). Contact the Department of Fish, Wildlife and Parks for additional information on this program. See [Exhibit 4-4](#) for the Department of Fish, Wildlife and Parks contact information.

#### **4.1.5.8 Hazardous Materials**

If the site is on or near an abandoned service station, mine tailings, municipal dumps, etc., consider the potential for hazardous waste (e.g., asbestos, lead-based paint). If there are questions regarding this determination, contact the Remediation Division at the Montana Department of Environmental Quality (MDEQ). See [Exhibit 4-4](#) for the MDEQ contact information.

#### **4.1.5.9 National and Montana Pollutant Discharge Elimination System**

The National and Montana Pollutant Discharge Elimination System (NPDES/MPDES) Section 402 – *Clean Water Act* requires a submission to the Montana Department of Environmental Quality (MDEQ) of a Notice of Intent (NOI) package for a storm water discharge associated with construction activity. This comes under the General Permit for Storm Water Discharges Associated with Construction Activity from the MDEQ. It applies during construction activities where one or more acres of ground are disturbed. Surface waters include rivers, streams, tributaries, impoundments and irrigation ditches. NOI packages can be obtained from the Permitting and Compliance Division at the MDEQ or the US Environmental Protection Agency for projects within reservation boundaries. The basic principle of the General Permit is to identify areas or activities during construction that may contribute pollutants to surface waters and to consider practical methods to reduce pollutants from the construction operation. The major pollutant that could be a potential problem for a CTEP project will be sediment discharges from increased erosion brought on by a storm event. If the project impacts a body of water, ensure that minimal sediment reaches surface waters by using appropriate erosion and sediment control measures called Best Management Practices (BMPs).

#### 4.1.5.10 Historical Preservation

Section 106 of the *National Historic Preservation Act* (Section 106) requires Federally assisted actions (e.g., CTEP projects) to determine the effects of their project on properties included in, or eligible for, the National Register of Historic Places (NRHP). In order to comply with Section 106, the CTEP Section will initiate a consultation/preservation review with the MDT Historian on behalf of the Local Entity. The Local Entity will be furnished with a copy of the Historian's findings. Based on these findings, the Local Entity must ensure their project is Section 106 compliant, which may involve minor project adjustments or require the preparation of a Cultural Resources Report (CRR).

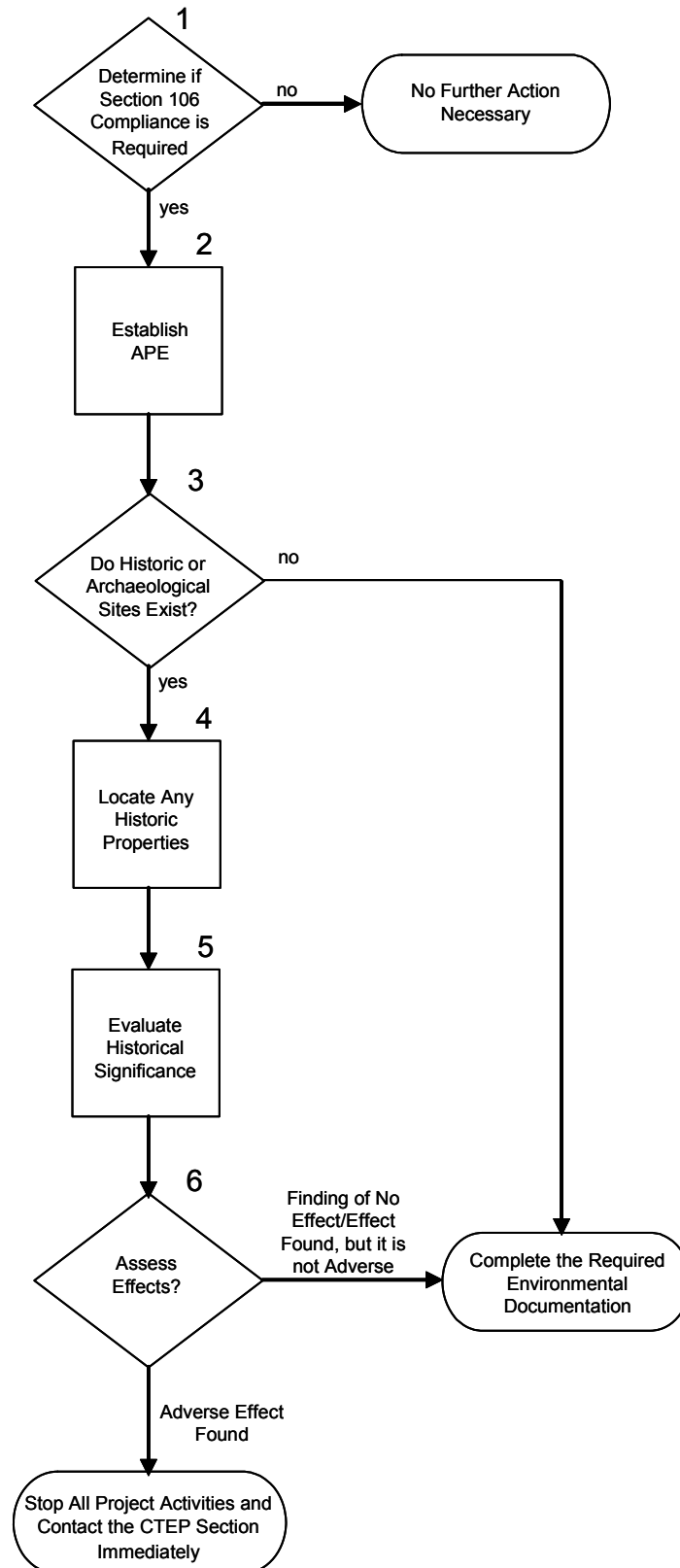
##### 4.1.5.10.1 Definitions

The following definitions are related to historic preservation and the Section 106 process:

1. Area of Potential Effects (APE). The geographic area where an “undertaking” may cause changes in the character or use of a historic property.
2. Historic Property. Any prehistoric or historic district, site, building, structure or object included in, or eligible for inclusion in the National Register including regulations, artifacts, records and remains related to and located within the properties. The term “eligible for inclusion in the National Register” includes both properties formally determined by the Secretary of the Interior and all other properties that meet National Register listing criteria.
3. National Register of Historic Places (NRHP). The National Register of Historic Places maintained by the Secretary of the Interior.
4. National Register Criteria. The criteria established by the Secretary of the Interior to evaluate the eligibility of properties for the NRHP.
5. State Historic Preservation Officer (SHPO). The official appointed/designated to administer the State Historic Preservation Program.
6. Undertaking. Any project, activity or program that results in changes to the character or use of a historic property is an undertaking, if these properties are located in the area of potential effects (APE). The project, activity or program must be under the jurisdiction (direct or indirect) of a Federal agency or licensed/assisted by a Federal agency. “Undertakings” include new and continuing projects, activities/programs and any of their elements not previously considered under Section 106.

##### 4.1.5.10.2 Historic Preservation Process

[Exhibit 4-1](#) illustrates a decision tree of the historic preservation process. The steps that follow correspond to the decision tree steps outlined in the Section 106 process that Local Entities must follow. This process applies to both archaeological sites and historic properties.

**Exhibit 4-1 – HISTORICAL PRESERVATION DECISION TREE**

**Step 1 – Determine if Section 106 Compliance is Required**

It is the responsibility of the Local Entity and MDT to determine if Section 106 compliance is necessary. For projects that do not require Section 106 compliance, this ends the review process. The CTEP Section should be consulted prior to making this determination. For additional information or questions regarding Step 1, contact the CTEP Section.

**Step 2 – Establish Area of Potential Effects (APE)**

If Section 106 compliance is required, the Local Entity must determine the APE. A preliminary draft of the APE effects should be delineated on maps according to the Local Entity's best judgment. It may be necessary to adjust the APE after consulting with the CTEP Section, who will consult with the SHPO as necessary.

**Step 3 – Do Historic Properties or Archaeological Sites Exist within the APE**

If an APE is established, review any existing information on historic properties, archaeological sites, paleontological sites and human skeletal remains that may be affected, including the likelihood that such properties, sites or remains may exist in the APE. The CTEP Section will provide a copy of the initial records search to the Local Entity along with the authorization to begin design engineering activities.

The MDT Historian may request the consultation of the SHPO regarding further actions to identify historic properties that may be affected on a case-by-case basis.

It is the responsibility of the Local Entity to seek additional information on potential historic properties or archeological sites and potential effects of the project by contacting local organizations and individuals with knowledge of historic properties, including any local historical societies and Indian Tribes.

By contacting the SHPO, local individuals and organizations or groups familiar with local historic properties or archaeological sites, the Local Entity and MDT will be able to determine if there is a need for further actions (e.g., field surveys).

If MDT and the Local Entity agree that no historic properties, archaeological sites, paleontological sites or human skeletal remains are affected, MDT may request a written determination of concurrence with this finding from the SHPO. In these cases, the SHPO will issue a finding that the proposed activity does not pose a threat to significant cultural resources and that no further cultural resource review appears warranted for the proposed undertaking. The Entity should notify interested persons and organizations of this determination and make the documentation available to the public. In these circumstances, the Local Entity is not required to take further steps in the Section 106 process (36 *CFR* 800.4(d)).

**Step 4 – Locate Any Historic Properties**

The Local Entity, in consultation with MDT, must make reasonable efforts to identify any historic properties, archaeological sites, paleontological sites or human skeletal remains that may be affected and gather sufficient information to assist the SHPO in evaluating the eligibility of these properties for the NRHP (36 *CFR* 800.4(b)).

**Step 5 – Evaluate Historical Significance**

The Local Entity, with concurrence from MDT and FHWA, will evaluate the historical significance of any properties for inclusion on the NRHP that may be affected by the project and have not been previously evaluated for eligibility. Written concurrence is then requested from the SHPO. If the Entity does not agree with MDT and the SHPO on the eligibility of a historic property or archaeological site for the NRHP, they have the right to request a determination of eligibility from the Keeper of the National Register (36 *CFR* 800).

**Step 6 – Assess Effects**

This Step will apply if historic properties, archaeological sites, paleontological sites or human skeletal remains have been identified and may be affected. Under Section 106, the following criteria is used for determining an “effect” and “adverse effect” (36 *CFR* 800.9):

1. Criteria of Effect. An undertaking has an effect on a historic property when it may alter characteristics of the property that qualify the property for inclusion in the NRHP. For the purpose of determining effect, altering a property’s location, setting or use may be relevant, depending on a property’s significant characteristics and should be considered.
2. Criteria of Adverse Effect. An undertaking is considered to have an adverse effect when the effect on a historic property may diminish the integrity of the property’s location, design, setting, materials, workmanship, feeling or association. Adverse effects may include physical destruction, damage or alteration of all or part of the property, change in character or setting or addition of inappropriate elements (e.g., noise).

If properties meet one of the two criteria for “effect,” it is necessary for the Local Entity to assess these “effects” in coordination with MDT and the SHPO and make one of the following three determinations:

1. Finding of No Effect. In consultation with MDT, the Local Entity may determine a “Finding of No Effect.” If this is determined, notify MDT (by letter) as well as any interested local historic preservation organizations or individuals. This letter must be signed by the Environmental Certifying Official and state the Finding of No Effect, along with the following information:
  - a description of the undertaking including photographs, maps and drawings, as necessary;

- a description of the efforts used to identify historic properties or archaeological sites;
- a statement of how and why the Finding of No Effect was found applicable; and
- the views of affected local governments, Native American Tribes, Federal or State agencies and the public, if any were provided, as well as a description of the means employed to gather those views.

MDT provides this information to the SHPO and unless the SHPO objects within 15 days of receipt, the Local Entity is not required to take any further steps in the Section 106 process.

2. An Effect is Found, but it is Not Adverse. When it is determined that the project or undertaking will have an effect on a historic property or archaeological site according to the “criteria of effect,” the Local Entity must decide if the effect is adverse or not adverse. This is done by the applying the “criteria of adverse effect” noted above. If the effect is “not adverse,” the Entity must obtain MDT concurrence with this determination. MDT will notify and submit to the SHPO summary information documenting the reasons for the finding.

If there is no objection from the SHPO to the finding of “no adverse effect” within 30 days of receipt of the notice, or if the SHPO objects but proposes changes that the Entity accepts, the Section 106 process ends. If the SHPO objects to the finding or the Entity does not agree with the changes proposed by the SHPO, the effect is considered adverse.

For a finding of “no adverse effect,” the following documentation must be maintained in the Entity’s Environmental Review Record file:

- a description of the undertaking including photographs, maps and drawings, as necessary;
- a description of the historic properties that may be affected by the undertaking;
- a description of the efforts used to identify historic properties or archaeological sites;
- a statement of how and why the criteria of “adverse effect” were found inapplicable; and
- the views of the SHPO, affected local governments, Native American Tribes, Federal or State agencies and the public, if any were provided, as well as a description of the means employed to gather those views.

3. An Effect is Found and it is Adverse. Local Entities are strongly discouraged from pursuing the development of projects that would cause an adverse effect. Projects determined to have an adverse effect require the Entity to implement avoidance, minimization and mitigation techniques. In addition, Section 4(f) resources must be addressed at this stage, which may result in a Section 4(f) Evaluation. If the Entity decides to pursue this approach, contact the MDT Historian or MDT Archeologist to discuss any necessary requirements and procedures.

The following documentation must be maintained in the Local Entity's Environmental Review Record file:

- a description of the undertaking including photographs, maps and drawings, as necessary;
- a description of the efforts used to identify historic properties or archaeological sites;
- a description of the affected historic properties, using materials already compiled during the evaluation of significance, as appropriate;
- a description of the undertaking's affects on historic properties;
- a description and evaluation of any alternative or mitigation measures proposed;
- a description of any alternative or mitigation measures that were considered, but not chosen, and the reasons for their rejection; and
- a description of the Local Entity's efforts to obtain and consider the views of affected local governments, Native American Tribes and other interested persons.

#### **4.1.6 Permits**

Permits required for the project must be identified and be on file with the Local Entity. The party responsible for obtaining the permit must also be identified. The following permits, including the responsible agency/individual, may be required:

1. *Montana Stream Protection Act* (SPA 124 Notification) — Department of Fish, Wildlife and Parks;
2. *Montana Floodplain and Floodway Management Act* (Floodplain Development Permit) — local floodplain coordinator;
3. Short-term Exemption from Montana's Surface Water Quality Standard (3A Authorization) — Department of Environmental Quality, Water Protection Bureau;

4. Montana Land Use License or Easement on Navigable Waters — Department of Natural Resources and Conservation, Trust Lands Management Division;
5. *Montana Water Use Act* (Water Right Permit) — Department of Natural Resources and Conservation, Water Rights Bureau;
6. *Federal Clean Water Act* (404 Permit-dredged or fill material into waters of the United States) — US Army Corps of Engineers;
7. *Federal Clean Water Act* (402 Permit-NPDES/MPDES storm water runoff) — Department of Environmental Quality on non-tribal lands/ US Environmental Protection Agency on tribal lands; and
8. *Federal Rivers and Harbors Act* (dredged or fill material into navigable waters of the United States) — US Army Corp of Engineers.

[Exhibit 4-4](#) contains the contact information for the above agencies. A useful publication for determining what permits may be needed during construction is *A Guide to Highway Construction Permitting in Montana*, available from the MDT Construction Program.

#### **4.1.7 Environmental Documentation**

Environmental reviews on Federal and/or State funded CTEP projects results in the preparation of one of the following environmental documents:

- Categorical Exclusion,
- Environmental Assessment (EA) and/or,
- Environmental Impact Statement (EIS).

The following Sections describe these environmental documents.

##### **4.1.7.1 Categorical Exclusions**

Categorical Exclusions are actions (based on past experience with similar actions) that do not involve significant environmental impacts, either individually or cumulatively, and therefore do not require preparation of an EA or an EIS. Categorical Exclusion actions are proposed projects that do not:

- induce significant impacts to planned growth or land use for the area;
- require the relocation of significant numbers of people;
- have a significant impact on any natural, cultural, recreational, historic or other resource;
- involve significant air, noise or water quality impacts; and
- have significant impacts on travel patterns.

Typically, CTEP projects will require either a Group (c) or a Group (d) Categorical Exclusion. The following Sections describe these two types of Categorical Exclusions.

#### 4.1.7.1.1 Group (c) Categorical Exclusion

Group (c) Categorical Exclusions are certain types of actions listed in 23 *CFR* 771.117(c) and also meet the criteria listed 23 *CFR* 771.117(a). These types of actions normally do not require any further NEPA approvals by the State or FHWA. The following are some of the typical CTEP actions listed in 23 *CFR* 771.117(c) and 40 *CFR* 1508.4 that meet the criteria for a Group (c) action letter:

- construction of bicycle and pedestrian lanes, paths and facilities;
- landscaping;
- installation of fencing, signs, pavement markings, small passenger shelters, traffic signals and railroad warning devices where no substantial land acquisition or traffic disruption will occur;
- acquisition of scenic easements; and
- alterations to facilities or vehicles for accessibility to elderly and disabled persons.

To qualify for a Group (c) Categorical Exclusion, the Environmental Certifying Official must determine that the project is an action listed in 23 *CFR* 771.117(c), and that the project activities are not affected by other Federal Statutes, Executive Orders or regulations. Most CTEP projects with no significant impacts to the environment will use a Group (c) Letter; see [Exhibit 4-5](#) and the [CTEP website](#).

The Environmental Certifying Official must first complete the Environmental Checklist, [Exhibit 4-3](#), and then sign the Group (c) Letter. Note that if a consultant has completed the documentation, the Environmental Certifying Official must still sign the Group (c) Letter.

The Environmental Certifying Official will submit the completed Environmental Checklist, Group (c) Letter and all supporting documentation to the CTEP Section for review and approval. If the CTEP Section finds the Group (c) Letter acceptable, they will approve the document and send copies to those on the distribution list, including the Local Entity.

Local Entities must prepare and maintain a complete record of the environmental review in their Environmental Review File. This file must contain the following for a Group (c) Categorical Exclusion:

- Designation of Environmental Certifying Official ([Exhibit 4-2](#));
- Environmental Checklist ([Exhibit 4-3](#));
- a signed copy of the Categorical Exclusion Group (c) Letter ([Exhibit 4-5](#)); and
- applicable documentation/correspondence, including public comments/public notices.

The records contained in the Environmental Review File must be available for public review in the Local Entity's general offices.

#### 4.1.7.1.2 Group (d) Categorical Exclusion

Group (d) Categorical Exclusions are additional actions that meet the criteria listed in 23 *CFR* 771.117(d). Group (d) Categorical Exclusions are actions that involve one or more factors that indicate the potential for unusual circumstances (e.g., actions requiring an Individual Section 404 Permit from the Army Corps of Engineers, actions involving in-stream work requiring non-routine mitigation measures). For more details on the potential for unusual circumstances, see 23 *CFR* 771.117(b). Group (d) Categorical Exclusions require the approval of FHWA. For CTEP projects, Group (d) actions typically include project actions that impact historical properties. The Local Entity must submit documentation that demonstrates that the specific conditions or criteria for these Categorical Exclusions are satisfied and that significant environmental effects will not result.

To process a Group (d) Categorical Exclusion, the Local Entity is required to prepare a Group (d) Letter; see [Exhibit 4-6](#). A Group (d) Letter may also be required when permits are required for project construction (e.g., a Section 404 Permit from the US Army Corps of Engineers, a SPA 124 Notification, Floodplain Permit).

When other public agencies have jurisdiction over the area proposed for the CTEP project, these agencies are considered Cooperating Agencies. The Local Entity or consultant must provide Cooperating Agencies with an opportunity to review and comment on the Group (d) Letter draft. Examples of agencies with jurisdiction may include:

- US Forest Service (FS);
- US Environmental Protection Agency (EPA);
- Native American Tribes and Groups;
- US Fish and Wildlife Service (USFWS);
- US Army Corps of Engineers (USACE);
- Montana Fish, Wildlife and Parks (FWP); and
- Montana Department of Environmental Quality (DEQ).

Local Entities must resolve all issues raised by Cooperating Agencies and outline resolutions to the issues in the Group (d) Letter.

If the Environmental Certifying Official determines that a Group (d) Letter is applicable, they must complete the Environmental Checklist ([Exhibit 4-3](#)) and prepare the Group (d) Letter. Both of these documents are available on the CTEP website ([Exhibit 4-3](#)) ([Exhibit 4-6](#)).

The Local Entity will submit two originals of the completed Group (d) Letter, Environmental Checklist and all supporting documentation to the CTEP Section for review and approval. If the CTEP Section finds the Group (d) Letter acceptable, they will approve the documents and send them to FHWA for their concurrence and signature. When FHWA concurs, they will keep one

original and return the other to the CTEP Section who will distribute copies to everyone on the distribution list.

Each Local Entity must prepare and maintain a complete record of the environmental review in their Environmental Review File. This file must contain the following for a Group (d) Categorical Exclusion:

- Designation of Environmental Certifying Official ([Exhibit 4-2](#));
- Environmental Checklist ([Exhibit 4-3](#));
- all permits;
- information documenting compliance with the Section 106 historic preservation process;
- a signed copy of the Categorical Exclusion Group (d) Letter ([Exhibit 4-6](#)); and
- applicable documentation/correspondence, including public comments/public notices.

The records contained in the Environmental Review File must be available for public review in the Local Entity's general offices.

#### 4.1.7.1.3 Re-evaluation of Categorical Exclusions

If a signed Categorical Exclusion for a project is more than three years old (for a project that is about to receive approval to begin the bid letting process), or the scope of work or project limits have changed, the environmental documentation must be re-evaluated by the Local Entity or consultant to determine if the document still addresses all environmental impacts. A Re-evaluation Letter ([Exhibit 4-7](#)) must be completed and submitted with all supporting documentation to the CTEP Section for review and approval. If the Re-evaluation Letter is acceptable, the CTEP Section will approve and send copies to everyone on the distribution list, including the Local Entity.

#### 4.1.7.2 Environmental Assessment

MDT may request the Local Entity to prepare an EA prior to right-of-way acquisition, construction, utility involvement or advertising for bids, if the project may significantly affect the quality of the environment or there is significant environmental controversy surrounding the project.

The preparation of an EA is a complex undertaking. If the Local Entity believes the preparation of an EA is required for their CTEP project, they should immediately contact the CTEP Section and not take any further action.

An EA is typically prepared when project actions cannot be categorically excluded, but do not clearly require the preparation of an EIS, or where MDT or FHWA believes an EA would assist in determining the need for an EIS. For more information on EA, review the FHWA Technical Advisory, T 6640.8A, *Guidance to Project Applicants on the Preparation and Processing of Environmental and Section 4(f) Documents*.

**4.1.7.3 Environmental Impact Statement**

The preparation of an EIS is extremely complex. If the Local Entity believes the preparation of an EIS is required for their CTEP project, they should immediately contact the CTEP Section and not take any further action.

For more information in EIS, review the FHWA Technical Advisory, T 6640.8A, *Guidance to Project Applicants on the Preparation and Processing of Environmental and Section 4(f) Documents*.

**4.1.7.4 Section 4(f) Evaluation**

Section 4(f) documentation is often part of an EA or an EIS, but it also can be separate. If the Local Entity believes the preparation of a Section 4(f) Evaluation is required for their CTEP project, they should contact the CTEP Section immediately and not take any further action.

## 4.2 APPLICABLE REQUIREMENTS

### 4.2.1 Federal Requirements

The following are the Federal environmental requirements that Local Entities must comply with when implementing CTEP projects:

1. General.
  - a. Executive Order 11514, *Protection and Enhancement of Environmental Quality*;
  - b. *National Environmental Policy Act of 1969* (42 USC 4321 et sequential, 49 USC 303, 23 USC 138 (Section 4(f) of the DOT Act, as amended) and the Reporting Requirements of 23 USC 128 and 23 CFR 771.135; and
  - c. *Environmental Impact and Related Procedures* (23 CFR 771).
2. Historic Properties.
  - a. Executive Order 11593, *Protection and Enhancement of the Cultural Environment*, 5/13/1971 (36 FR 8921), 3 CFR 1971-1975 Compilation, particularly Section 2(c);
  - b. Executive Order 13175, *Consultation and Coordination with Indian Tribal Governments*;
  - c. *National Historic Preservation Act of 1966*, Section 106 (16 USC 470, as amended) through completion of the procedures outlined in 36 CFR 800 and 63;
  - d. *Archeological and Historic Preservation Act of 1974* (16 USC 469, as amended);
  - e. *Native American Graves Protection and Repatriation Act of 1990*, as amended (25 USC 3001-3013);
  - f. *Advisory Council on Historic Preservation* (36 CFR Part 800); and
  - g. *Section 4(f) of the Department of Transportation Act of 1966* (49 USC 303).
3. Floodplain Management.
  - a. Executive Order 11296, *Evaluation of Flood Hazard in Locating Federally Owned or Financed Buildings, Roads and Other Facilities and in Disposing of Federal Lands and Properties*;
  - b. Executive Order 11988, , *Floodplain Management*, 5/24/77 (42 FR 26951, et sequential and 23 CFR 650.101-650.117);

- c. *Flood Disaster Protection Act of 1973*, Public Law 93-234, 87 Statute 975, (42 USC 4001-4129);
  - d. *National Flood Insurance Act*;
  - e. *National Flood Insurance Program* (44 CFR 59-77); and
  - f. DOT Order 5650.2 *Floodplain Management and Protection*.
4. Wetlands.
- a. Executive Order 11990, 5/24/1977, *Protection of Wetlands* (42 FR 26961, et sequential);
  - b. *Clean Water Act*, Section 404 and 401;
  - c. *Mitigation of Impacts to Wetlands and Natural Habitat* (23 CFR 777);
  - d. *Protection of Environment* (40 CFR 230); and
  - e. DOT Order 5660.1A, *Protection of Nation's Wetlands*.
5. Noise.
- a. *Noise Control Act of 1972*; and
  - b. *Noise Abatement and Control* (24 CFR 51.100), (44 FR 40861, 7/12/1979, as amended at 61 FR 13333, 3/26/1996).
6. Air Quality.
- a. *Clean Air Act* (42 USC 7521(a) and 40 CFR 81.327, as amended); and
  - b. *Protection of Environment* (40 CFR 51; 52 and 93, as amended).
7. Man-made Hazards.
- a. Title IV of the *Lead-based Paint Poisoning Prevention Act* (42 USC 4831).
8. Water Supply/Quality.
- a. Executive Order 11288, *Prevention, Control, and Abatement of Water Pollution by Federal Activities*;
  - b. *Federal Water Pollution Control Act* (PL 92-500), as amended (33 USC 1251-1376), including *The Clean Water Act of 1977*, Public Law 92-212 (33 USC Executive Order 1376, et sequential);

- c. *Safe Drinking Water Act of 1974* (42 USC 201, 300(f) et seq. and 21 USC 349), as amended, specifically Section 1424(e) (42 USC 300h-303(e));
  - d. *Clean Water Act*, Section 401;
  - e. *US Environmental Protection Agency Implementing Regulations* (40 CFR 121-125, 129-131, 133, 135-136, 230-231);
  - f. *Highways* (23 CFR 650 (Subpart B), 771); and
  - g. *Navigation and Navigable Waters* (33 CFR 2099, 320-323, 325, 328-329).
9. Hazardous Materials/Solid Waste Disposal.
- a. *Solid Waste Disposal Act*, as amended by the *Resource Conservation and Recovery Act of 1976* (42 USC 6901, et sequential);
  - b. *Resource Conservation and Recovery Act*, as amended in 1984 by the *Hazardous and Solid Waste Act Amendments* (40 CFR 261);
  - c. *Comprehensive Environmental Response, Compensation and Liability Act* (Superfund);
  - d. *Safe Drinking Water Act*; and
  - e. *Hazardous Materials Transportation Act*.
10. Farmlands Protection.
- a. *Farmlands Protection Policy Act of 1981*, (7 USC 4201(b) and 4202) and any applicable regulations (7 CFR 658).
11. Wild and Scenic Rivers.
- a. *National Wild and Scenic Rivers Act of 1968*, as amended (16 USC 1271, et sequential); and
  - b. *Wild and Scenic Rivers* (36 CFR 297).
12. Endangered Species.
- a. *Endangered Species Act of 1973*, as amended (16 USC 1531-1543);
  - b. *Fish and Wildlife Coordination Act of 1958*, as amended, (16 USC 661- 667); and
  - c. *Wildlife and Fisheries* (50 CFR 17, 23, 81, 222, 225-227, 402, 424, 450-453).

13. Invasive Species.

- a. Executive Order 13112, *Invasive Species*; and
- b. *Federal Noxious Weed Act of 1974*.

14. Environmental Justice.

- a. Executive Order 12898 and Title VI of the *Civil Rights Act of 1964*, (42 USC 2000d) *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*, 2/11/1994 (59 FR 2629), (3 CFR, 1994 compilation, page 859); and
- b. Executive Order 11593, *Protection and Enhancement of the Cultural Environment*.

**4.2.2 State Requirements**

The following are the State of Montana environmental requirements that Local Entities must comply with when implementing CTEP projects:

1. General.

- a. *Montana Environmental Policy Act* (Title 75, Chapter 1, Parts 1 through 3, *MCA*); and
- b. *MDT MEPA Administrative Rules* (ARM 18.2.235 through 18.2.261).

2. Floodplain Management.

- a. *Floodplain and Floodway Management* (Title 76, Chapter 5, *MCA*); and
- b. *Floodplain Management Administrative Rules* (ARM 36.15.101 through 36.15.903).

3. Air Quality.

- a. *Clean Air Act of Montana* (Title 75, Chapter 2, *MCA*);
- b. *Air Quality Administrative Rules* (ARM Title 17, Chapter 8); and
- c. *Asbestos Control Administrative Rules* (ARM Title 17, Chapter 74, Subchapters 3 and 4).

4. Water Supply/Quality.

- a. *The Natural Streambed and Land Preservation Act of 1975* (Title 75, Chapter 7, Part 1, *MCA*);
- b. *Lakeshore Protection* (Title 75, Chapter 7, Part 2, *MCA*);
- c. *Montana Groundwater Pollution Control System* (ARM Title 17, Chapter 30, Subchapter 10);
- d. *Storm Water Discharges* (ARM Title 17, Chapter 30, Subchapter 11);
- e. *Montana Pollutant Discharge Elimination System Permits* (ARM Title 17, Chapter 30, Subchapter 13);
- f. *Stream Protection* (Title 87, Chapter 5, Part 5, *MCA*);
- g. *Public Water Supply* (Title 75, Chapter 6, Part 1, *MCA*); and
- h. *Water Quality* (Title 75, Chapter 5, *MCA*).

5. Solid/ Hazardous Waste.

- a. *Montana Solid Waste Management Act* (Title 75, Chapter 10, Part 2, *MCA*);
- b. *Plans, Funds, and Administration (Regarding Solid Waste Management)* (Title 75, Chapter 10, Part 1, *MCA*);
- c. *Montana Comprehensive Environmental Cleanup and Responsibility Act* (Title 75, Chapter 10, Parts 705 through 724, *MCA*); and
- d. *Montana Hazardous Waste Act* (Title 75, Chapter 10, Part 4, *MCA*).

6. Noxious Weeds.

- a. *Montana County Noxious Weed Control Law* (Title 7, Chapter 22, Part 21, *MCA*).

7. Cultural Resources.

- a. *Montana Antiquities Act* (Title 22, Chapter 3, Part 4, *MCA*); and
- b. *Montana Human Skeletal Remains and Burial Site Protection Act* (Title 22, Chapter 3, Part 8, *MCA*).

8. Wildlife.

- a. *Montana Species of Concern/Sensitive Species Listing Program*, Administered by the Montana Natural Heritage Program and Montana Fish, Wildlife and Parks.

*Sample – to be completed on Local Entity letterhead*

<date>

CTEP Supervisor, CTEP Section  
Montana Department of Transportation  
2701 Prospect Avenue  
PO Box 201001  
Helena, MT 59620-1001

Subject:       **Designation of Environmental Certifying Official**

Reference:   Project Number: <project number>  
              Project Name: <project name>  
              Uniform Project Number: <uniform project number>

This is to notify you that <name>, <title>, is designated as the Environmental Certifying Official responsible for all activities associated with the environmental review process to be completed in conjunction with the development of the approved transportation project referenced.

\_\_\_\_\_  
Signature\*

\_\_\_\_\_  
Typed Name and Title

*\* The chief elected official (county commission mayor or chairperson).*

## **Exhibit 4-2 – DESIGNATION OF ENVIRONMENTAL CERTIFYING OFFICIAL**

## ENVIRONMENTAL CHECKLIST

**Project Name and Project Number:** \_\_\_\_\_

**UPN:** \_\_\_\_\_

Area of Statutory-Regulatory Compliance (Provide precise citations for applicable statutes and regulations at the end of this Checklist.)		N/A	Review Required*	Permits Required*	Conditions and/or Mitigation Actions Required*	Note and Attach Documentation
1.	Historic Properties (SHPO)					
2.	Floodplain Management (County)					
3.	Wetlands Protection (COE)					
4.	Noise (DEQ)					
5.	Air Quality (DEQ)					
6.	Manmade Hazards					
	Abandoned Underground Storage Tanks					
	Leaking Underground Storage Tanks					
	Possible Hazardous Waste Sites					
	Airport Clear Zones					
7.	Water Quality (DEQ or EPA for reservation projects)					
	Surface Water/Water Quality					
	Groundwater & Aquifers <sup>1</sup>					
8.	Farmlands					
9.	Environmental Justice					

**Exhibit 4-3 – ENVIRONMENTAL CHECKLIST**

Area of Statutory-Regulatory Compliance (Provide precise citations for applicable statutes and regulations at the end of this Checklist.)		N/A	Review Required*	Permits Required*	Conditions and/or Mitigation Actions Required*	Note and Attach Documentation
10.	Threatened or Endangered Species, Fish & Wildlife (USF&WS)					
11.	Biological Resources - Habitat containing sensitive species; either nesting, foraging, or inhabiting (MDFW&P/MSL)					
12.	Is there substantial, local, regional or other controversy on environmental grounds?					
13.	Section 4(f) – Would project change use of park, recreation area, wildlife refuge, or waterfowl refuge (23 CFR 771.135)?					
14.	Section 6(f) – Would project change use of protected properties acquired or developed with Land and Water Conservation Funds administered by the Department of Fish, Wildlife and Parks?					
15.	List other agencies contacted.					
*Attach evidence that required actions have been taken.						
<sup>1</sup> Including the Missoula Sole Source Aquifer; contact the CTEP Section for further information regarding Missoula area projects.						
<b>Certification</b>						
I certify that the findings on the proceeding Environmental Checklist accurately reflect the status of compliance with applicable laws and regulations for the proposed transportation project.						
Signature						
Type Name and Title of Environmental Certifying Official						
Date						

**Exhibit 4-3 – ENVIRONMENTAL CHECKLIST**  
(Continued)

<b>Advisory Council on Historic Preservation</b> 1100 Pennsylvania Avenue NW Suite 803 Washington, DC 20004	<b>(202) 606-8503</b>
<b>Billings District</b> Montana Department of Transportation 424 Morey PO Box 20437 Billings, MT 59104-0437	<b>(406) 657-0210</b>
<b>Butte District</b> Montana Department of Transportation PO Box 3068 Butte, MT 59702-3068	<b>(406) 494-9600</b>
<b>Glendive District</b> Montana Department of Transportation 503 North River Avenue PO Box 890 Glendive, MT 59330-0890	<b>(406) 345-8212</b>
<b>Great Falls District</b> Montana Department of Transportation 104 18 <sup>th</sup> Avenue, North East PO Box 1359 Great Falls, MT 59403-1359	<b>(406) 454-5887</b>
<b>Missoula District</b> Montana Department of Transportation Box 7039 Missoula, MT 59807-7039	<b>(406) 523-5800</b>
<b>MT Department of Commerce</b> 1218 East 6 <sup>th</sup> Avenue PO Box 200517 Helena, MT 59620-0517	<b>(406) 444-3494</b>
<b>MT Department of Environmental Quality Water Protection Bureau</b> 1520 East 6 <sup>th</sup> Avenue PO Box 200901 Metcalf Building Helena, MT 59620-0901	<b>(406) 444-3080</b>

**Exhibit 4-4 – CONTACT LIST**

<b>MT Department of Environmental Quality Remediation Division Hazardous Waste Site Cleanup Bureau</b> 2209 Phoenix Avenue PO Box 200901 Phoenix Building Helena, MT 59620-0901	<b>(406) 444-5977</b>
<b>MT Department of Fish, Wildlife &amp; Parks, Fisheries Division Wildlife Division</b> 1420 East 6 <sup>th</sup> Avenue PO Box 200701 Helena, MT 59620-0701	<b>(406) 444-2449 (406) 444-2612</b>
<b>MT Department of Natural Resources and Conservation Trust Land Management Division Water Right Bureau</b> 1625 11 <sup>th</sup> Avenue PO Box 201601 Helena, MT 59620-1601	<b>(406) 444-2074 (406) 444-6610</b>
<b>MT Natural Resource Information System MT State Library – <i>Provide Township, Range and Section of the project's location</i></b> 1515 East 6 <sup>th</sup> Avenue PO Box 201800 Helena, MT 59620-1800	<b>(406) 444-5354</b>
<b>State Historic Preservation Office Montana State Historical Society</b> 225 North Roberts PO Box 201202 Helena, MT 59620-1202	<b>(406) 444-7715</b>
<b>US Army Corps of Engineers</b> Helena Regulatory Office 10 West 15 <sup>th</sup> Street Suite 2200 Helena, MT 59626	<b>(406) 441-1375</b>
<b>US Environmental Protection Agency</b> EPA Montana Operations Office 10 West 15 <sup>th</sup> Street, Suite 3200 Helena, MT 59626	<b>(406) 457-5000 Toll-free: (866) 457-2690</b>
<b>US Fish and Wildlife Service</b> 100 North Park, Suite 320 Helena, MT 59601	<b>(406) 449-5225</b>

**Exhibit 4-4 – CONTACT LIST**  
(Continued)

Sample – to be completed on Local Entity letterhead

<date>

CTEP Supervisor, CTEP Section  
Montana Department of Transportation  
2701 Prospect Avenue  
PO Box 201001  
Helena, MT 59620-1001

Subject: **Categorical Exclusion Group (c) Action Letter**

Reference: Federal-aid Project Number: <project number>  
Federal-aid Project Name: <project name>  
MDT Uniform Project Number: <uniform project number>

<Local Entity name and location> has determined that the proposed project study will not involve unusual circumstances as described in 23 *CFR* 771.117(b). It therefore qualifies as a Categorical Exclusion under the provisions of 23 *CFR* 771.117(c), part <select the appropriate Categorical Exclusion category>. The proposed action also qualifies as a Categorical Exclusion under the provisions of ARM 18.2.261 (MCA Sections 75-1-103 and 75-1-201).

In accordance with FHWA's letter (3/29/99) to MDT's Environmental Services, please notify FHWA that the proposed action is being processed in accordance with 23 *CFR* 771.117(c).

\_\_\_\_\_  
Signature of Environmental Certifying Official or Chief Elected Official

\_\_\_\_\_  
Type Name and Title

Concur:

\_\_\_\_\_  
CTEP Engineer

\_\_\_\_\_  
Date

cc: <name>, MDT, District Administrator – <MDT District name>  
<name>, MDT, Consultant Design Engineer  
<name>, MDT, Bureau Chief – Environmental Services Bureau  
<name>, MDT, Fiscal Planning Administrator  
<name>, MDT, CTEP Section Supervisor  
<name or group>, Environmental Council  
FHWA – Helena  
<Local Entity name>  
<consultant name, if applicable>  
<other public agencies with jurisdiction, if applicable>

#### **Exhibit 4-5 – CATEGORICAL EXCLUSION GROUP (c) ACTION LETTER**

*Sample – to be completed on Local Entity letterhead*

**<date>**

**<name>**, Operations Engineer  
Federal Highway Administration (FHWA)  
2880 Skyway Drive  
Helena, MT 59602

**Subject: Categorical Exclusion Group (d) Action Letter**

**Reference:** Federal-aid Project Number: **<project number>**  
Federal-aid Project Name: **<project name>**  
MDT Uniform Project Number: **<uniform project number>**

This is a request for FHWA concurrence that the proposed project meets the criteria for classification as a Categorical Exclusion under the provisions of 23 *CFR* 771.117(d). This proposed action also qualifies as a Categorical Exclusion under the provisions of *ARM* 18.2.261 (*MCA* Sections 75-1-103 and 75-1-201). A project location map is attached.

This proposed project is a **<Describe action (e.g., bike path, sidewalk.)>**.

The location of the proposed project is **<Describe route and highway numbers, beginning and ending mileposts, intersecting routes, length, nearest communities, county, section, township and range.>**.

The intent of the proposed project is to **<Describe purpose and need/reason for proposed action, existing conditions, safety concerns, compliance with ADA, etc.>**.

The proposed project has been evaluated for, and does not have any adverse effect on the following environmental areas of concern:

*Place an "X" next to the areas where there will be no effects from the project. If there will be a minor effect from the project, leave the space blank and discuss the topic in the following sections.*

- |  |   |
|--|---|
| <input type="checkbox"/> Stormwater Runoff               | <input type="checkbox"/> Noise                                |
| <input type="checkbox"/> Prime and Unique Farmlands      | <input type="checkbox"/> Section 404 – <i>Clean Water Act</i> |
| <input type="checkbox"/> Floodplains (EO 11988/FEMA)     | <input type="checkbox"/> Social/Economic                      |
| <input type="checkbox"/> Hazardous Waste                 | <input type="checkbox"/> Stream Preservation/Water Quality    |
| <input type="checkbox"/> Historical/Cultural Resources   | <input type="checkbox"/> Threatened/Endangered Species        |
| <input type="checkbox"/> Changes in Land Use             | <input type="checkbox"/> Wetlands (EO 11990)                  |
| <input type="checkbox"/> USDOT – 4(f)/NL&WCF – 6(f) Acts |   |

#### **Exhibit 4-6 – CATEGORICAL EXCLUSION GROUP (d) ACTION LETTER**

## PROJECT IMPACTS

The proposed project will have a minor effect on the following environmental area(s):

*Use or delete the following sections and describe project impacts as necessary:*

**Historic/Cultural Resources** – The *<historic or cultural resource name> <was listed/is eligible for>* the National Register of Historic Places (NRHP) in *<month, year>*. A Section 106 Determination of Effect has resulted in a finding of “No Adverse Effect,” which has been reviewed and concurred with by the State Historic Preservation Office (SHPO) on *<month, day, year>*. A copy of their concurrence letter is attached.

**Threatened/Endangered Species** – The US Department of the Interior’s Fish & Wildlife Service (USF&WS) was contacted on *<date>* for identifying Federally listed Threatened/Endangered Species. The following Threatened/Endangered Species were identified by the USF&WS as being in the vicinity of the proposed project and a Biological Resources Report was prepared by *<name>*. The conclusion of the Biological Resources Report is that (there are no biological concerns on this project/the project is “Not Likely to Adversely Effect” Threatened/Endangered Species.

*Include as appropriate:*

**Fish** – The *<fish name>* is an endangered fish species on the *<watercourse name>*.

**Threatened Wildlife** – The *<wildlife name>* is a threatened species in the State of Montana.

**Endangered Wildlife** – The *<wildlife name>* is an endangered species in the State of Montana.

*Include if any part of a project is within a delineated 100-year floodplain:*

**Floodplains** – A floodplain delineated under Federal Emergency Management Administration (FEMA) criteria along the *<watercourse name>* is encroached by the proposed project. *<County name>* administers this floodplain for FEMA, and a Floodplain Development Permit will be required for this encroachment.

The floodplain encroachments from the proposed project occur *<encroachment location>*. The proposed project will not promote or encourage development within this delineated floodplain, or increase flood liability hazards from its construction. The proposed project is therefore considered to be in compliance with Executive Order 11988.

*Use or delete, but must include one Air Quality paragraph:*

**Air Quality** – The proposed project is located in an “unclassifiable”/attainment area of Montana for air quality under 40 *CFR* 81.327, as amended. As such, this proposed project is not covered under the EPA’s Final Rule of September 15, 1997 on Air Quality conformity. Therefore, the proposed project complies with Section 176(c) of the *Clean Air Act* as amended (42 *USC* 7521(a)).

**OR**

*Use or delete, but must include one Air Quality paragraph:*

**Air Quality** – The proposed project is located in a (CO/PM10) “nonattainment” area of Montana for air quality under 40 *CFR* 81.327, as amended. However, this type of proposed project is listed in EPA’s Final Rule of September 15, 1997 on Air Quality conformity as being exempt from the requirement of a conformity determination. Therefore, the proposed project complies with Section 176(c) of the *Clean Air Act* as amended (42 *USC* 7521(a)).

*Use or delete. This section is required if the 4(f) work involves historic site:*

**Section 4(f)** – It has been determined that Section 4(f) does not apply to restoration, rehabilitation or maintenance of historic facilities when there is a “No Adverse Effect” determination, and when SHPO and the advisory council have been consulted and have not objected to this finding.

*Use or delete. This section is required if the 4(f) work involves a park:*

**Section 4(f)** – While this project involves a Section 4(f) resource, the local entity with specific jurisdiction over the resource has petitioned the Department for funding to finance the development of the proposed improvement. This petition is accepted as written approval from the official having jurisdiction and taken as evidence that this locally proposed project is consistent with the designated use of the property, and that all practical planning to minimize harm *<has been/will be>* accomplished in the location and design process.

There is no “use” of a Section 4(f) resource as protected land is not permanently incorporated into a State/Federal transportation facility. There is also no “constructive use” of protected lands. (Constructive use occurs when a transportation facility not on protected land substantially impairs the activities, features, or attributes that qualify a resource for protection under Section 4(f)).

*Use or delete. The following section is required if one of the above Section 4(f) parts was used above and no LWCF funds were used in constructing the existing facility. Note that the LWCF program requires property purchased or developed with LWCF assistance be retained and used for public outdoor recreation. Should a conversion use exist, the converted property must be replaced at the sponsor’s expense with property of equal value and outdoor recreation usefulness.*

**Section 6(f)** – There is no Conversion of Use involvement as protected property acquired or developed with Land and Water Conservation Funds (LWCF) are not within the project limits.

**Cumulative Impacts** – *<Agency name (Local Entity, MDT, etc.) with proposed or active projects in proposed projects vicinity.> currently has <number, if any> active and <number, if any> proposed projects in the vicinity of the proposed project. <Identify the nearest projects, including project number, if applicable, what type and distance/direction from proposed project. Describe what, if any, cumulative impacts may result, or if there are none due to remoteness in time, more than three years between “Ready” dates, and/or distance, more than 0.5 miles from proposed project.>.*

*The following section applies if above paragraph clearly shows no significant cumulative environmental impacts will occur:*

Therefore, none of the above projects, in conjunction with the proposed project, will have any significant cumulative environmental impacts. *<State if the cooperating agencies (tribes, EPA or other agencies with jurisdiction) have identified ongoing or proposed actions that would be affected by or have impacts on the project.>*

## Exhibit 4-6 – CATEGORICAL EXCLUSION GROUP (d) ACTION LETTER

(Continued)

## PERMITS

**Permits Required** – The following permits will be acquired prior to any relevant disturbance: (also see the FEMA Floodplain Development Permit, following):

- This proposed project will be in compliance with the provisions for both Water Quality under MCA 75-5-401(2) for Section 3(a) authorizations, and 124 SPA Stream Protection Notification under MCA 87-5-501 through 509, inclusive.

*The following permit is required when any project action will affect the bed or banks of a Montana stream:*

- A 124 SPA Stream Protection Notification (was approved/will be required) by the MDFW&P on **<date>**.

*The following permit is required for projects on Indian Reservations with more than 5 acres disturbed or 1 acre disturbed within 100 feet of a surface water body:*

- A Notice of Intent for Storm Water Discharges under the National Pollutant Discharge Elimination System General Permit (PL 92-500) will be required with the EPA for the control of water pollution for both specific and non-point sources.

*Use or delete:*

- The proposed project will require the following permit(s) under the *Clean Water Act*:

*The following permit is required for projects outside Indian Reservations with more than 5 acres disturbed or 1 acres disturbed within 100 ft of a surface water body:*

- A Section 402/Montana Pollutant Discharge Elimination System permit from the Montana Department of Environmental Quality (DEQ) Permitting and Compliance Division.

*The following permit is required for projects that will place fill into US waters (lakes and wetlands, and below ordinary high water mark of rivers and streams):*

- A Section 404 permit from the US Army Corps of Engineers (COE). The COE will be notified that the proposed project qualifies for a “Nationwide” 404 permit under the provisions of 33 *CFR* 330.

*Use or delete:*

- All work will be in accordance with the *Water Quality Act of 1987* (PL 100-4), as amended.

*Use or delete:*

- Approximately **<# of acres>** of new ROW/construction permits will be needed for the proposed project. There will be **<no>** utility involvement.

## PUBLIC INVOLVEMENT

**Public Involvement** – **<Describe the opportunities provided for public involvement in selecting the CTEP project.>**

## EROSION CONTROL PLAN

*Use or delete, for projects on Indian Reservations with more than 5 acres disturbed or 1 acre disturbed within 100 ft of a surface water body:*

An Erosion Control Plan will be prepared for this proposed project. Best Management Practices (BMPs) will be included in the design of this Plan using guidelines as established in MDT's Highway Construction Standard Erosion Control Workplan. The objective is to minimize erosion of disturbed areas during and following construction of this proposed project.

*Use or delete, for projects outside Indian Reservations with more than 5 acres disturbed or 1 acre disturbed within 100 ft of a surface water body:*

An Erosion Control Plan will be submitted to the Montana DEQ Permitting and Compliance Division in compliance with their Montana Pollutant Discharge Elimination System Regulations (ARM 16.20.1314) for the proposed project. BMPs will be included in the design of this Plan using guidelines as established in MDT's Highway Construction Standard Erosion Control Workplan. The objective is to minimize erosion of disturbed areas during and following construction of this proposed project.

In accordance with MCA 7-22-2152 and 60-2-208, *<Local Entity name>* will re-establish a permanent desirable vegetation community along all areas disturbed by the proposed construction. A set of revegetation guidelines *<will be/were>* developed by *<Consultant name>* that must be followed by the contractor. These specifications *<will>* include instructions on seeding methods, seeding dates, types and amounts of mulch and fertilizer, along with seed mix components. Seed mixes include a variety of species to ensure that areas disturbed by construction are immediately stabilized by vegetative cover. The Seeding Special Provisions developed for this proposed project *<will be/have been>* forwarded to the responsible County Weed Board for approval.

## AMERICANS WITH DISABILITIES ACT

**Americans with Disabilities Act** – *<describe what>* will be installed in compliance with the *Americans with Disabilities Act* (PL 101-336).

**CONCLUSION**

The project will not induce significant land use changes or promote unplanned growth. There will be no significant affects on access to adjacent properties or present traffic patterns. The project will not create disproportionately high and adverse human health or environmental effects on minority and low-income populations (EO 12898) and complies with Title VI of the *Civil Rights Act of 1964* (42 USC 2000d). In accordance with 23 CFR 771.117(a), this action will neither individually nor cumulatively, have any significant environmental impacts. Therefore, we are requesting FHWA's concurrence that the proposed project is properly classified as Categorical Exclusion.

“ALTERNATIVE ACCESSIBLE FORMATS OF THIS DOCUMENT WILL BE PROVIDED ON REQUEST”

\_\_\_\_\_  
Signature of Environmental Certifying Official or Chief Elected Official

\_\_\_\_\_  
Type Name and Title

Concur: \_\_\_\_\_  
CTEP Section Supervisor Date

Concur: \_\_\_\_\_  
Federal Highway Administration Date

Attachment: Project Location Map

cc: <name>, MDT, District Administrator – <MDT District name>  
<name>, MDT, Consultant Design Engineer  
<name>, MDT, Bureau Chief – Environmental Services Bureau  
<name>, MDT, Fiscal Planning Administrator  
<name>, MDT, CTEP Section Supervisor  
<name or group>, Environmental Quality Council  
<consultant name, if applicable>  
<other public agencies with jurisdiction (DSL, BLM, USFS, Tribes, etc.), if applicable>

**Exhibit 4-6 – CATEGORICAL EXCLUSION GROUP (d) ACTION LETTER**  
(Continued)



*Sample – to be completed on Local Entity letterhead*

<date>

<name>, Program Development Engineer  
Federal Highway Administration (FHWA)  
585 Shepard Way,  
Helena, MT 59601

Subject: **Re-evaluation of Categorical Exclusion Letter**

Reference: Federal-aid Project Number: <project number>  
Federal-aid Project Name: <project name>  
MDT Uniform Project Number: <uniform project number>

The <Local Entity name> has reviewed the proposed project impacts and determined that the project still qualifies as a Categorical Exclusion under the provisions of 23 *CFR* 771.129 <(c) or (d), as appropriate>. A copy of the original Categorical Exclusion is attached. The proposed action also continues to qualify as a Categorical Exclusion under the provisions of ARM 18.2.261 (*MCA* Sections 75-1-103 and 75-1-201). This determination is based on the following:

The Scope-of-Work for the proposed project has been reviewed and <has/has not> changed.

*Use or delete:*

The changes involve <describe changes>. As a result of these changes, we have re-evaluated the project for environmental impacts <biological resources/cultural resources/hazardous waste/etc.> and found that in accordance with 23 *CFR* 771.117(a), this action will not have any significant environmental impacts, either individually or cumulatively.

*Use if original document is a Categorical Exclusion (c) or delete:*

This notification documents that this proposed action is still properly classified as a Categorical Exclusion under the provisions of 23 *CFR* 771.117(c), part <select the appropriate part(s) from Section 4.1.7.1>.

*Use if original document is a Categorical Exclusion (d) or delete:*

In accordance with FHWA concurrence on <date>, this notification documents that the proposed action is still properly classified as a Categorical Exclusion under the provisions of 23 *CFR* 771.117(d).

\_\_\_\_\_  
Signature of Environmental Certifying Official or Chief Elected Official

Concur: \_\_\_\_\_  
CTEP Engineer

Attachment: Original Categorical Exclusion

cc: <name>, MDT District Administrator – <MDT district name>  
<name>, MDT Consultant Design Engineer  
<name>, MDT, Bureau Chief – Environmental Services Bureau  
<name>, MDT, Fiscal Planning Administrator  
<name>, MDT, CTEP Section Supervisor  
<name or group>, Environmental Quality Council  
<Local Entity name>  
<consultant name, if applicable>

#### **Exhibit 4-7 – RE-EVALUATION OF CATEGORICAL EXCLUSION LETTER**



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## Chapter 5

# CONSULTANT SERVICES

### 5.1 OVERVIEW

The purpose of this Chapter is to provide guidance to the Local Entity for the procurement of consultant services for use on CTEP projects. For additional information on consultant services, see the *MDT Consultant Services Manual*.

#### 5.1.1 Requirements

The requirements in this Section provide basic consultant service references for the Local Entity. In addition to these requirements, the Local Entity must comply with the applicable requirements discussed in the other chapters of this *Manual*.

##### 5.1.1.1 Federal Requirements

The following are the applicable Federal documents on consultant service requirements that the Local Entity should review:

- 23 CFR 140, *Reimbursement*;
- 23 CFR 172, *Administration of Engineering and Design Related Service Contracts*;
- 48 CFR 31, *Contract Cost Principles and Procedures*;
- 49 CFR 18, *Uniform Administrative Requirements for Grants and Cooperative Agreement to States and Local Governments*;
- 49 CFR 21, *Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act of 1964*; and
- OMB Circulars No. A-21, A-87 and A-122.

##### 5.1.1.2 State Requirements

The following are the applicable State documents on consultant service requirements that the Local Entity should review:

- MCA 7-5-23, *County Contracts*;
- MCA 7-5-43, *Municipal Contracts and Franchises*;
- MCA 18-8-2, *Architectural, Engineering and Land Surveying Services*;
- MCA 18-8-204, *Procedures for Selection*;

- *MCA 18-8-212, Exception (to Procurement of Services for Public Contracts);*
- *MCA 7-1-2121, Publication and Content of Notice – Proof of Publication;*
- *MCA 7-1-4127, Publication of Notice – Content – Proof;*
- *MCA 49-3, Governmental Code of Fair Practices; and*
- *MCA 49-3-207, Nondiscrimination Provision in All Public Contracts.*

### **5.1.2    Types of Contracts**

The types of consultant services contracts most commonly used for CTEP projects are as follows:

1.    Cost Plus Fixed Fee. The consultant is reimbursed for all eligible direct and indirect costs within defined limits, plus a predetermined amount as a fixed fee. This type of contract is MDT's preferred method of compensation. It is used when the extent, scope, complexity, character or duration of the work cannot be reasonably determined in advance. Federal regulations stipulate an upper limit of 15% for fixed fee (profit); however, the Local Entity can negotiate a lower percentage. For MDT projects, MDT limits the consultant's fee to no more than 12%.
2.    Lump Sum. This contract is only suitable when the scope of work (quantity and type) can be clearly defined in advance. This contract is typically not suitable for construction administration agreements. It is only appropriate for use during the preliminary engineering (design engineering) phase of the project and where the total contract is under \$10,000. Both parties must be agreeable to a lump sum contract because changes in the scope of work are not allowed. Federal regulations stipulate an upper limit of 15% for fixed fee (profit); however, the Local Entity can negotiate a lower percentage. For MDT projects, MDT limits the consultant's fee to no more than 12%.

### **5.1.3    Consultant Services vs. Contracted Services**

The procedures for procuring consultant services differ from the procedures for contracted services; see the following:

1.    Consultant Services. Consultant/professional services typically require a specialized skill set (e.g., engineer, architect, land surveyor) and provide a design or planning function.
2.    Contracted Services. Contracted/vendor services are typically labor intensive (e.g., landscape design, biological assessments, wetland delineation, historical/cultural surveys, property appraisals) and encompass the physical act of completing a task.

This Chapter focuses on the procurement of consultant services. For more information on contracted service procedures, see [Section 7.4.1](#).

## 5.2 PROCEDURES

### 5.2.1 Consultant Services Procedures

Under FHWA/MDT administrative requirements, Local Entities must:

- maintain records including rationale for the method of procurement, selection of contract type, selection or rejection of consultant and the basis for the contract price;
- settle all contractual and administrative issues resulting from procurement activities; and
- have protest procedures in place to handle and resolve disputes relating to procurements.

[Exhibit 5-1](#) is a flowchart illustrating the procedures for procuring consultant services. Details for each step are provided in the following Activity Description Sections.

#### 5.2.1.1 Activity 1 – Determine Need (for Consultant)

The procurement of consultant services begins with determining and documenting the need and benefits of hiring a consultant. Typically, this occurs because the Local Entity lacks the time or expertise to perform a specific task. Once a need is established, the Local Entity must determine the general project scope of work for the task or tasks.

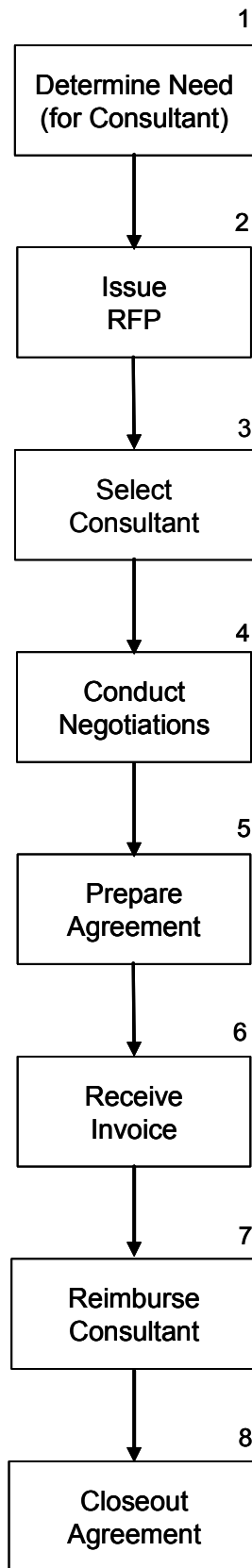
In order for the preliminary engineering (design engineering) costs to be eligible for Federal reimbursement, Local Entities need to ensure they perform the following:

- Review and become familiar with the applicable Federal and State laws that govern the procurement of consultant or contracted services.
- If a consultant service contract is over \$20,000, select a consultant using the competitive solicitation and negotiation process. See [Activity 2](#) for details. For contracts less than \$20,000, the Local Entity may use direct negotiations to obtain consultant services; see [Section 5.2.2](#).

#### 5.2.1.2 Activity 2 – Issue RFP

##### 5.2.1.2.1 Requirements

*MCA 18-8-201* requires a competitive solicitation and negotiation process for projects where the estimated consultant services exceed \$20,000. This entails the issuance of a Request for Proposal (RFP). Carefully consider the content of the RFP before it is issued. Ensure that the RFP addresses the key issues involved in the project, the type of assistance required and the evaluation factors and system for awarding points are appropriate for the project. *MCA 18-8-204* sets out minimum criteria that should be considered for selection of architects, engineers or land surveyors.

**Exhibit 5-1 – CONSULTANT SERVICES PROCEDURES FLOWCHART**

A RFP example is provided in [Exhibit 5-2](#). This document is also available electronically on the [CTEP website](#).

Solicitations must incorporate a clear and accurate description of the technical requirements for the product or service. The solicitation must identify the following:

- name of the Local Entity and project description;
- scope of work and/or technical services expected of the consultant;
- nondiscrimination requirements that the consultant must fulfill;
- Disadvantage Business Enterprise (DBE) goals (percentage) for the project;
- method of payment for the project;
- overhead rate requirements;
- number of proposal copies that must be submitted by the consultant;
- location (address) and time the proposals must be received;
- proposal format, including any page restrictions;
- how the Local Entity will evaluate the proposals it receives;
- notification procedures for successful and unsuccessful proposers; and
- Local Entity contact name, telephone number and email address for prospective proposers to submit questions.

#### 5.2.1.2.2 Advertisement

Procurement transactions must be conducted in a manner that provides full and open competition. Procurement procedures must follow all applicable Federal and State rules and regulations, including Title VI of the *1964 Civil Rights Act*, and should avoid any provisions that restrict or eliminate competition.

Publication requirements can be found in *MCA* 7-1-2121 and 7-1-4127. In general, the notification must be published at least twice, six days apart in the local newspaper. The Local Entity may also elect to advertise in local or national trade magazines, internet, radio, television, etc.

In order to reduce the cost of publicizing a RFP, Local Entities may use an abstract format to advertise its availability in lieu of publishing the entire text of the RFP. If this approach is used, provide a website address or allow sufficient time for prospective bidders to request and receive copies of the RFP and prepare a response/proposal. A sample abstract RFP advertisement form is provided in [Exhibit 5-3](#).

#### 5.2.1.2.3 Disadvantage Business Enterprise Participation

Local Entities are required to provide opportunities for contracting organizations of all sizes to compete. Disadvantage Business Enterprise (DBE) participation is encouraged in accordance with Title VI of the *1964 Civil Rights Act*, subsequent Federal-aid Highway Acts and 49 *CFR* 23.

DBEs should be used where practical as sources of supplies, equipment, construction, consultant services, contracted service providers and other contracted services.

Steps to encourage competition include:

- placing MDT certified DBEs on solicitation lists,
- ensuring DBEs are solicited when they are potential sources,
- encouraging DBE use by including DBE provisions in solicitations, and
- requiring prime contractors or contracted service providers to take affirmative steps outlined above if subcontracts will be used.

Keep all documentation of DBE activities in the project file. A current listing of DBE firms is available from the online DBE Directory on the MDT Contractor's System website. For assistance in contacting or recruiting DBE companies, contact the MDT DBE Supportive Services Office.

### **5.2.1.3 Activity 3 – Select Consultant**

#### **5.2.1.3.1 Ranking Consultants**

Local Entities should have a written selection procedure for the competitive solicitation/negotiation process. As stated in [Activity 2](#), this selection process must be included in the RFP. After receiving the responses to the RFP, evaluate (rank) the proposals using this selection procedure. A sample of criteria for evaluating consultant proposals is provided in [Exhibit 5-4](#).

The Local Entity should select the consultant ranked number one to begin negotiations. If for any reason the Local Entity does not use the number one ranked firm (e.g., failure to come to terms during negotiations), document the reasons and include them in the project file. The Local Entity may then begin negotiations with the second ranked consultant.

MDT approval is required following the consultant selection and before contract approval.

#### **5.2.1.3.2 Debarment Check**

Provide the name and address of the consultant selected (including the names of the principals in the firm and any subcontractors) to the CTEP Section. Local Entities cannot award a contract to any party that is debarred, suspended, excluded or ineligible for participation in Federal-aid programs. Local Entities and their proposed consultant must certify that they and their principals are not debarred, suspended, voluntarily excluded or ineligible. The Federal list of debarred bidders can be verified on the MDT website. The debarment check must be completed prior to contract execution.

**5.2.1.4 Activity 4 – Conduct Negotiations**

After ranking the consultants, negotiations can begin with the number one ranked consultant. Negotiations allow the specifics of the project to be discussed (e.g., scope of work, estimated costs). The Local Entity and the consultant should meet to discuss the following:

- proposed scope of work;
- Local Entity responsibilities;
- consultant responsibilities;
- consultant questions;
- expected schedule for the project, including major milestones;
- contract requirements;
- Federal Acquisition Requirements (FAR) information for contracts that may exceed \$50,000; and
- other pertinent information.

Based on this meeting, the consultant will prepare a written proposal for the Local Entity's consideration. This proposal should clearly define the project scope of work, responsibilities of the consultant and Local Entity, project work plan, project schedule and provide a detailed cost estimate.

Upon receiving the consultant's proposal, review the proposed scope of work and project schedule to ensure they meet the Local Entity's objectives and compare the consultant's cost estimate with the amount shown in the CTEP Project Application. The Local Entity and consultant may need to negotiate any differences. This may require adjusting the project scope of work, proposed schedule and/or the Local Entity's or consultant's cost estimate. Do not expect the consultant to significantly reduce their cost estimate to meet the estimate submitted in the CTEP Project Application. If an amicable agreement cannot be reached, formally discontinue negotiations with the first consultant and begin negotiations with the next highest rated consultant.

**5.2.1.5 Activity 5 – Prepare Agreement**

Montana requires consultants to meet the requirements of the Federal Acquisition Regulations (FAR), Part 31. For CTEP projects, MDT has established a \$50,000 threshold value for consultant services, above which the consultant is required to submit an indirect cost rate audit performed by an independent CPA that meets FAR. See the *MDT Consultant Services Manual* for more information.

Once the Local Entity and consultant reach an agreement, prepare a contract agreement defining the project's conditions and costs. An example contract agreement is provided in [Exhibit 5-5](#). This document is also available electronically on the [CTEP website](#). Include the following language pertaining to the consultant's cost estimate in the contract, "I certify that the cost or pricing data submitted and identified to the Local Entity during the selection and negotiation process is current, complete and accurate as of the date of the agreement on the price."

Forward the draft agreement to the CTEP Section for review. Do not sign the agreement at this point. The CTEP Section will review the contract agreement to determine if it meets State and Federal requirements. MDT comments, edits or questions will be submitted to the Local Entity. If the contract agreement does not meet CTEP funding requirements, this may result in costs being ineligible for Federal-aid funding.

Upon approval from the CTEP Section, forward two copies of the agreement to the consultant for signature. After signing the agreement, the consultant will send both original copies back to the Local Entity. The contract agreement should be reviewed and approved by the Local Entity's legal services. After all signatures have been obtained, the Local Entity will submit one photocopy of the executed agreement to the CTEP Section, retain one original executed copy for its records and send one original executed copy to the consultant. Once the consultant has received the executed agreement, the consultant may begin work.

If the Local Entity decides to revise the scope of work, cost estimate or schedule, an amendment to the original contract must be prepared. Ensure the contract amendment indicates which terms and conditions of the original agreement have been changed or remain in effect. New signatures must be obtained from all parties. Provide a copy of this amendment to the CTEP Section.

#### **5.2.1.6 Activity 6 – Receive Invoice**

Not more than once a month, the consultant will send an invoice to the Local Entity for services rendered. The invoice will detail the following, which can be used by the Entity when preparing the Progress Report to the CTEP Section:

- time period for the work,
- breakdown of direct labor and project costs,
- percentage of the budget expended,
- percentage complete for each project task,
- services rendered during the time period,
- services expected to be completed in the next time period, and
- a discussion of any critical issues that have occurred during the past time period.

#### **5.2.1.7 Activity 7 – Reimburse Consultant**

Reimbursement is a two-part process. First, the consultant sends an invoice to the Local Entity for services rendered and second, the Local Entity bills the CTEP Section for reimbursement.

[Exhibit 5-6](#) is a sample of a Billing Invoice that the consultant would submit to the Local Entity. Along with the consultant invoice ([Exhibit 5-6](#)), the Local Entity will submit their invoice to the CTEP Section. [Exhibit 5-7](#) is an example of an invoice that the Local Entity would submit to the CTEP Section.

Note that MDT will not provide any reimbursements until a copy of the fully-executed and approved contract has been received by the CTEP Section. It is important to note that work completed prior to the executed contract is not eligible for CTEP reimbursement.

Submit a progress invoice to MDT for reimbursement no more than once a month for each CTEP project. MDT will reimburse the percentage of the invoice estimate, up to the limit of the CTEP funds authorized, by account. The Local Entity must secure MDT's approval before overrunning the contract award amount.

Include a copy of the progress estimate and invoice along with all support documents in the project files. The support documentation should clearly demonstrate that the work completed is in conformance with the agreement. Document all questions that may have arisen on quality and/or quantity of work.

The Local Entity should first reimburse the consultant and then submit a reimbursement request to MDT.

#### **5.2.1.8 Activity 8 – Closeout Agreement**

With the final invoice to MDT, include a copy of the Local Entity's written final approval to the consultant and the consultant's final invoice.

Local Entities must maintain records regarding any procurement that is funded, wholly or in part, with Federal-aid funds. Documentation should include copies of the following:

- legal advertisements,
- affidavits of publication,
- RFPs,
- proposal packages,
- evaluation forms and other related selection materials,
- consultant's final submission,
- final invoice,
- approval of project, and
- payment filing requirements.

#### **5.2.2 Procedures for Small Contracts**

For small contracts (contracts under \$20,000), Local Entities have the option to conduct direct negotiations with appropriate consultants (*MCA* 18-8-212). For these small contracts, the Local

Entity is not required to prepare a RFP or advertise the project. When selecting consultants, ensure that the contacted consultant firms have the necessary qualifications, experience and time to perform the necessary work. Where practical, review the DBE directory for qualified DBE consultants. After selection of a consultant, follow the procedures in [Sections 5.2.1.4 through 5.2.1.8](#).

## CONSULTANT SERVICES REQUEST FOR PROPOSAL

*Note: The following is an example of a format that may be used to issue RFPs for consultant services. Local Entities should consider the content of their RFPs carefully before they are issued. In particular, use care when drafting the factors for evaluating qualifications to ensure they are complete and appropriate for the project. See Exhibit 5-3, for an example format used to advertise the availability of a consultant services RFP.*

The *<Local Entity name>* has received notice from MDT to develop a Federal-aid CTEP project titled *<Project Name>*.

The *<Local Entity name>* is requesting proposals from firms interested in performing *<scope of work explanation>*. The work performed on CTEP projects must comply with all applicable requirements under the CTEP Section. The project is generally described as *<description of project including purpose, location, schedule and present status>*.

**The Scope of Work and Technical Requirements of services include the following:**

*<Insert scope of work and/or technical services expected from the consultant, e.g.,*

- *Design of a bicycle and pedestrian path along US 2 from mile marker 45 to 50.*
- *The consultant will design, conduct a preliminary environmental analysis, assist with contract letting and perform all construction oversight activities.>*

### **Legal Compliance:**

The consultant performing work under the proposed contract is subject to the MCA 49-3, Governmental Code of Fair Practices; 49 CFR 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act of 1964 and 49 CFR 23, Participation of Disadvantaged Business Enterprise in Airport Concessions.

In accordance with MCA 49-3-207, Nondiscrimination Provision in All Public Contracts, the consultant will ensure that hiring is made based on merit and qualifications and that there will be no discrimination based on race, color, religion, creed, political ideas, sex, age, marital status, physical or mental handicap or national origin by the persons performing the contract.

In addition, the consultant will not discriminate on the grounds of race, color, sex or national origin in selecting and retaining subconsultants, including procuring materials and leasing equipment. The consultant will not participate, directly or indirectly, in discrimination prohibited by 49 CFR 21, including employment practices, when the agreement covers a program set forth in Appendix A of the regulations.

### **Disadvantaged Business Enterprise (DBE) Goals:**

Consultant DBE goals have been established for this project. A current list of MDT certified consultants is available from the MDT website. Each firm invited to submit a proposal is required to address this issue.

In accordance with DBE goal setting procedures for the CTEP Section, the following DBE goals have been set for this request:

GOAL: *<DBE goal percentage>*%

The percentage listed relates to a percentage of the overall contract amount. The proposal must clearly identify:

- the DBE firm who will perform the work, and
- the specific work to be performed by the DBE.

Completing the attached forms may accomplish these tasks.

**Method of Payment:**

The method of payment that will be considered for these contracted services includes cost plus a fixed fee, for profit or fixed price. The fee for these contracted services will be paid, in part, with CTEP funds.

**Federal Acquisition Regulations:**

An overhead rate for the current fiscal year audited in accordance with the Federal Acquisition Regulations (FAR) may be required for the contract.

**Proposal Submittal and Content:**

Five (5) copies of the proposals must be submitted to *<Local Entity name and official title>*, *<location – address, city, state, zip code>* by *<time, date, year>*, and the submittal must include the following:

**Sample Format for RFP:**

In response to the initial RFP, the consultant's proposal will follow the outline below and provide the following information:

- I. Describe the specific service the firm will provide (2 page maximum).
- II. Provide qualifications of the project team and technical personnel assigned to work on project.
  - A. Provide an organization chart depicting the personnel to be used on this project, their area of expertise, registration, special training, chain of command and office location(s). Identify how much of each person's time will be spent on the project. If personnel from more than one office will be used, indicate each office (2 page maximum).
  - B. Provide résumés of above personnel, including specific related project experience; identify when applicable experience for each person was obtained (Include in Appendix A).
  - C. Provide a specific outline and description of the support services proposed to complete the entire project from start to finish, including subcontractors, drilling, aerial photography, labs, etc. (2 page maximum).
  - D. Discuss physical plant and in-house facilities (e.g., computers, labs) (1 page maximum).
- III. Provide a brief (but specific) outline of firm's previous projects (e.g., highway, bridge, EIS, interchange, enhancement) and other projects relating to the specific project RFP, and any special abilities or experience suiting the firm for work on the particular project. Identify the time frame (beginning and completion dates) in which projects were completed and experience gained (4 page maximum).

- IV. Describe how the firm proposes to perform the project as defined in the scope of work. Demonstrate the firm's competence to do the work with available manpower and resources taking into account present and projected workload (2 page maximum).
- V. List as references all of the firm's clients from the past 3 years for projects that were similar in scope and work (Include in Appendix B).
  - A. Include client name, contact person, phone number.
  - B. Provide a contract value range.

#### Evaluation of Proposal Submittals:

All submittals will be evaluated in accordance with the following factors:

*Note: The evaluation factors listed below are examples. Local Entities should include factors they believe are appropriate to the work tasks, with relative weights for each according to priority. Ensure the factors add up to 100%.*

- I. **<##>% – Location:** This criterion may be assigned 0% to 5% weight depending upon necessity of firm's geographical locations and/or job expertise requirements. Local Entities will determine proper weight to this category for each project.
- II. **<##>% – Quality of Firm and Personnel:**
  - A. Related experience on similar projects.
  - B. Qualifications, experience and training of staff assigned to project.
- III. **<##>% – Capability and Capacity of Firm:**
  - A. Ability to meet all technical requirements.
  - B. Capability of firm to meet project time requirements.
  - C. Capability to respond to project and Local Entity and MDT requirements.
  - D. Compatibility of systems, equipment (e.g., CADD and public visualization capabilities).
- IV. **<##>% – Record of Past Performance of Firm in Previous Projects.** Rating on the past performance will be done by the Local Entity.
  - A. Measure of previous record with the Local Entity will be based on the in-house documentation of quality of work, on schedule performance, cost performance and cooperation with the Local Entity Engineer and staff.
  - B. A limited or no previous record with the Local Entity will require reference checks. Local Entity will devise an equitable measure for this rating criterion.

### Exhibit 5-2 – CONSULTANT SERVICES REQUEST FOR PROPOSAL (Continued)

**Evaluation of Proposal Submittals:**

All submittals will be evaluated in accordance with the following factors:

*Note: The evaluation factors listed below are examples. Local Entities should include factors they believe are appropriate to the work tasks, with relative weights for each according to priority.*

Understanding and quality of response to the RFP for consultant (architectural, engineering or surveying) contracts: 100%.

1. Ability of consultant to identify project-specific issues (25%).
2. Ability of consultant to communicate firm's proposed approach to specific project issues (25%).
3. Clarity of consultant's response and understanding of the Local Entity's and MDT's project requirements (25%).
4. Organization of consultant's work plan (25%).
5. If necessary, other pertinent factors may be considered and weights adjusted accordingly.

**General:**

Include the following on the outside of the response package, "<MDT Project Name and STPE Number>."

Following the review and evaluation of all RFP submittals, the list of interested firms will be narrowed to an appropriate short list. Those selected will then be reviewed. An interview may also be requested to aid in the selection of a consultant.

The award will be made to the qualified proposer whose proposal is deemed most advantageous to the <Local Entity name>, all factors considered. Unsuccessful proposers will be notified in writing as soon as possible.

Respondents may review the MDT CTEP Project Application which includes a description of the proposed project including scope of work, location, schedule and other pertinent information by visiting the <Local Entity name>, offices during regular office hours.

This solicitation is being offered in accordance with Federal and State requirements governing procurement of consultant services. Accordingly, the <Local Entity governing body> reserves the right to negotiate an agreement based on fair and reasonable compensation for the scope of work and services proposed, as well as the right to reject any and all responses deemed unqualified, unsatisfactory or inappropriate.

For questions, please contact <contact person name and title> at <contact phone number>.

**Exhibit 5-2 – CONSULTANT SERVICES REQUEST FOR PROPOSAL**  
(Continued)

## REQUEST FOR PROPOSAL (RFP) ADVERTISEMENT

The *<Local Entity name>* has received approval from the MDT to develop a Federal-aid CTEP project titled *<project name>*.

The *<Local Entity council/commissioner/administrator>* is requesting proposals for architectural/engineering (AE) services to assist the *<lead local office name>* in the design and oversight of construction of this *<brief project description>* in compliance with all applicable requirements under the CTEP Section.

Copies of the detailed Request for Proposal (RFP), including a description of the services to be provided by respondents, the minimum content of responses and the factors to be used to evaluate the responses, can be obtained by contacting *<Local Entity name, address and telephone number>*. All responses to the detailed RFP must be submitted by *<date and time>*.

### Exhibit 5-3 – SAMPLE CONSULTANT SERVICES RFP ADVERTISEMENT

## REQUEST FOR PROPOSAL (RFP) EVALUATION CRITERIA

### Firm:

The factors and questions under them are examples that are designed to fulfill Federal and State requirements regarding procurement of Consultant Services (e.g., architect, engineer and land surveyor).

Local Entities may want to adapt the RFP, including evaluation factors and system for awarding points, to the key issues involved in the project and the type of assistance needed.

MCA 18-8-204 sets out minimum criteria that should be considered for selection of architects, engineers or land surveyors. The factors involved in reviewing responses to a RFP for contracted services are different from those involved in a RFP for consultant services.

### Proposal Ranking Factors:

Factors analyzed will be those listed as selection factors in the RFP. The factors listed below represent items normally requested in the proposal.

Understanding and quality of response to RFP for consultant contracts:

1. Ability of consultant to identify project-specific issues (25%).
2. Ability of consultant to communicate firm's proposed approach to specific project issues (25%).
3. Clarity of consultant's response and understanding of Local Entity's and MDT's project requirements (25%).
4. Organization of consultant's work plan (25%),

*Note: If necessary, other pertinent factors may be considered and weights adjusted accordingly.*

**SUBTOTAL:** \_\_\_\_\_

**TOTAL:** \_\_\_\_\_

**GRAND TOTAL:** \_\_\_\_\_

DBE Schedule of Participation and Bidder's list must be completed by the selected firm.

Signed: \_\_\_\_\_  
(Rating Panel Member) Date

### Exhibit 5-4 – EXAMPLE RFP EVALUATION CRITERIA

## TABULATION OF PROPOSALS

Rating Panel Members											
Proposer											Grand Total
											Proposal

**Exhibit 5-4 – EXAMPLE RFP EVALUATION CRITERIA**  
(Continued)

## CONSULTANT SERVICES AGREEMENT (CTEP PROJECTS)

This Agreement is made and entered into this *<date>* day of *<month, year>*, by and between *<Local Entity name>*, from now on referred to as the Local Entity, and *<consultant firm name>*, from now on referred to as the Consultant, whose principal office is located at *<location – address, city, state, zip code>*.

The Montana Department of Transportation, herein referred to as MDT, has approved the proposed Local Entity's enhancement project funded under Montana's Federal-aid Community Transportation Enhancement Program (CTEP).

The Local Entity desires to employ the Consultant to furnish certain specific services of an *<engineering or architectural>* nature. The Consultant agrees to provide such services in accordance with the conditions provided and to carry out all the duties and obligations imposed by the Agreement.

The Consultant agrees to provide the Local Entity with project development and design for Federal-aid Project Number *<Federal-aid project number>*, *<Project name as shown on Project Specific Agreement>*, Uniform Project Number *<#####>*, located *<describe location with project limits>*.

This project will involve *<description from the Project Specific Agreement (PSA). Modify as necessary to briefly explain what is anticipated>*.

The Consultant may obtain copies of all manuals, guidelines and other MDT documents from the CTEP Section. Consultant may be charged for copies of documents.

### Article I – Scope of Work

#### SECTION 1 – STANDARD OF CARE

The Consultant's performance on all services, obligations and responsibilities under this Agreement will be in a manner that is consistent with that degree of care and skill ordinarily exercised by members of the *<engineering or architectural>* profession currently practicing under similar circumstances.

#### SECTION 2 – GENERAL

The Consultant, in performance of all work called for under this Agreement, will furnish all services for *<preliminary engineering and/or construction engineering>* called for in the specific project scope outlined in Section 4 of this Article. The Consultant *<will or will not>* assist the Local Entity in the advertisement and award of the construction contract.

#### SECTION 3 – PROJECT DEVELOPMENT AND DESIGN

The Consultant will develop the project; conduct all necessary surveys, evaluations, environmental research, documentation and analyses; perform designs and prepare project manuals for the project.

Project development will be in accordance with the *MDT CTEP Manual*. The Consultant's work will be performed in accordance with the most current version of the following documents, as applicable:

- *MDT CTEP Manual,*
- *Appendix CTEP Manual of CSA,*
- *MDT Road Design Manual,*
- *MDT Structure Manual,*
- *MDT Hydraulics Manual,*
- *MDT Survey Manual,*

- *MDT Right-of-Way Operations Manual,*
- *MDT Traffic Engineering Manual,*
- *MDT Construction Administration Manual,*
- *MDT Environmental Manual,*
- *AASHTO Standard Specifications for Highway Bridges,*
- *MDT Detailed Drawings,*
- *MDT Project Development Procedures,*
- *MDT Standard Specifications for Road and Bridge Construction,*
- *MDT Consultant Services Manual,*
- *Manual on Uniform Traffic Control Devices (MUTCD),*
- *American Society for Testing and Materials (ASTM),*
- *Montana Materials Manual of Test Procedures,*
- *MDT CADD Standards Manual,*
- *Approach Standards for Montana Highways,*
- *MDT Public Involvement Handbook,*
- *AASHTO Guide for the Development of Bicycle Facilities,*
- *AASHTO Guide Specification for Design of Pedestrian Bridges, and*
- *Montana Public Works Standard Specifications.*

#### **SECTION 4 – SPECIFIC PROJECT SCOPE**

*<Enter the detailed scope of work for this Agreement; Include specific tasks. This section may refer back to Exhibit E where a detailed scope of work with a project schedule may be listed.>*

#### **SECTION 5 – REPORTS**

- A. The Consultant will prepare the minutes for all meetings involved with the project and provide a copy of each to the Local Entity. The following formal reports will also be required:
1. *<Include a list of all reports that will be required from the consultant.>*
  2. *<Include a list of all reports that will be required from the consultant.>*
- B. The Consultant will identify and justify all exceptions to design standards (see Art. I, Sec. 3) that are found to be necessary during the design of the Project. The justification must include economic analysis. The Consultant will submit a Design Exception Request to the Local Entity for approval by MDT.

#### **SECTION 6 – OBLIGATIONS OF THE LOCAL ENTITY TO THE CONSULTANT**

In addition to the obligations of the Local Entity to the Consultant listed elsewhere in this agreement, the Local Entity will:

- A. Cooperate with the Consultant in making necessary arrangements with public officials as the Consultant may need to contact for advice, counsel and information.
- B. Provide timely approvals of the Consultant's formal submittals in writing in all instances. If verbal approvals are given in the interest of progressing the work, they must be confirmed in writing by the Local Entity at the earliest possible time.

### **Exhibit 5-5 – CONSULTANT SERVICES AGREEMENT** (Continued)

- C. The Local Entity will provide the Consultant with any information needed by the Consultant for rendering the services required under this Agreement. If materials prepared by the Local Entity or its consultants are incomplete or erroneous, the Local Entity will compensate the Consultant for any work required to correct them. Information generated by sources other than the Local Entity, MDT or their consultants may be used by the Consultant, but the Local Entity and MDT assumes no liability for its accuracy or completeness.
- D. Furnish copies of the Local Entity's existing as-built construction and right-and-way plans (as available).
- E. The Local Entity will not reuse, make or permit to be made any modifications to the Consultant's final design and drawings without the prior written authorization of the Consultant. The Local Entity will make no claim against the Consultant arising from any unauthorized reuse or modification of the design and drawings.
- F. Give prompt written notice to the Consultant of any development that affects the scope or time of performance of the Consultant's services, or any defect or nonconformance in the Consultant's services or in the work of any subconsultant.

#### **SECTION 7 – CONFERENCES, PROGRESS REPORTS AND LIAISON**

- A. Conferences will be held as necessary between representatives of the Local Entity and the Consultant to review and discuss progress and any matters pertinent to any phase of work. Additional compensation will not be made for those conferences.
- B. The Consultant will be responsible to and will report to *<Local Entity project manager name>*, for payment, submission of information, etc. All submittals will be made through *<Consultant Liaison name>*, who will be the Consultant's liaison.
- C. Requests for visits to the site or at the office of the Consultant may be made by the Local Entity, representatives of the MDT, Federal Highway Administration or the Consultant in conjunction with any other party or parties for the purpose of review or inspection of the work.
- D. The Consultant will furnish to the Local Entity a brief narrative progress report on the first day of each month showing the status of the work on the Project. The report will cover all phases of work accomplished during the period of the report and show the percentage of work completed for each phase of the Project. Mention should be made of any matters that may have adversely affected the progress of the work.
- E. The Consultant, upon Local Entity's direction, will confer with public agencies, including planning authorities, giving consideration to suggestions and plans of these agencies.
- F. The Consultant will submit to the Local Entity the professional history, classification and salary of each person to be assigned to the Project. The Local Entity will reserve the right to approve all personnel and will so inform the Consultant of approval in writing.

#### **SECTION 8 – PERSONNEL**

The Consultant must employ a registered Professional Engineer or Architect in the State of Montana.

#### **SECTION 9 – ENDORSEMENTS**

The Consultant will furnish professional stamps, statements or other suitable means to signify responsible endorsement of work.

### **Exhibit 5-5 – CONSULTANT SERVICES AGREEMENT** (Continued)

## **Article II – Time of Beginning and Completion**

### **SECTION 1 – PROJECT COMPLETION TIME**

- A. The Consultant agrees to start work on the professional services outlined in Article I of this Consultant Services Agreement within 10 days after receipt of written notice to proceed from the Local Entity.
- B. The mutually agreed to Project Schedule, Exhibit E, is made a part of this Agreement. Except as provided below, the Consultant must meet all deadlines and scheduled submittal dates. The Consultant will make reasonable efforts to improve on the schedule.
- C. Except as provided below, all work as specified in Article I of this Agreement must be completed by *<end date of Agreement month, day, year>*.
- D. If during the Project development, the Consultant becomes aware of circumstances that have or may have an adverse affect on the scheduled completion of any or all phases of the Project, or that the Consultant will be unable to meet any schedule deadlines or submittal dates, the consultant will immediately notify the Local Entity in writing. The Local Entity and the Consultant will together take the steps necessary to maintain the Project on schedule. The Project completion schedule will be adjusted only if necessary.
- E. The Consultant is not responsible for delays caused by factors beyond the Consultant's control, including delays because of strikes, lockouts, work slowdowns or stoppages, accidents, acts of God, failure of any governmental or other regulatory authority to act in a timely manner, failure of the Local Entity to furnish timely information or approve or disapprove of the Consultant's services or work product promptly or delays caused by faulty performance by the Local Entity.
- F. The Consultant submits the final contract plans package to the Local Entity and MDT for review. The Consultant will make any revisions to the plans that are required as a result of this review.
- G. Any alteration in the time schedule under Article II, Section 1C, shall be subject to the provisions of Article II, Section 2B.

### **SECTION 2 – CHANGES**

- A. If additional work is requested by the Local Entity or delays beyond the control of the Consultant prevent completion of the services to be performed under this Agreement in the time specified, the Local Entity will grant an equitable adjustment of the Agreement amount and/or time for performance for all affected phases of the work. The Consultant shall provide a written request for an adjustment within 10 days from the date the Consultant receives notice of the reasons for the requested adjustment.

## **ARTICLE III – Payment**

### **SECTION 1 – PAYMENT FOR SERVICES**

This Agreement will be administered on a cost plus fixed fee basis. The salaries, overhead rate, salary additive rate and other compensatory rates, as included in the Consultant's cost proposal, Exhibit B, will remain fixed for the duration of this Agreement. However, the Consultant may make written request to the Local Entity to make revisions to the above rates. The Local Entity may approve revisions if they are reasonable and justified.

## **Exhibit 5-5 – CONSULTANT SERVICES AGREEMENT** (Continued)

**SECTION 2 – DEFINITIONS****A. Payroll Costs**

1. Payroll costs shall be defined as the actual salaries and payroll items of all personnel working on the Project. The Local Entity agrees to pay actual payroll items including Social Security, Unemployment Compensation, excise and payroll taxes, employees' compensation insurance, sick leave, vacation, holiday pay and employees' retirement, employee medical and disability insurance, in addition to actual salaries. The Local Entity agrees to reimburse the Consultant for overtime at the rate of one and one-half (1½) times the hourly rate paid each employee. Requests for authorization of overtime will require prior written approval of the Local Entity.
2. Overtime is all hours worked in excess of 40 hours per week.
3. The hourly rate for salaried employees shall be determined from their annual salary divided by 2080 hours.

**B. General Administrative Overhead**

General administrative overhead of the Consultant is applicable to the payroll costs described in Paragraph A "Payroll Costs". Overhead may include, but not be limited to, the following: administrative, clerical and unallocated labor; employee bonuses and incentive awards; general travel expenses; depreciation; dues and subscriptions; computer and equipment expense; equipment rental; freight; general business insurance; employee travel accident and life insurance; legal and accounting; office, drafting room and laboratory supplies; professional society fees; recruiting; rent; building and equipment repairs and maintenance; taxes and licenses; telephone and telegraph (except toll charges specifically related to each individual project); general travel and employee relocation; utilities and janitorial services and office miscellaneous expense. Specifically excluded are bad debts and interest on borrowed capital.

**C. Out-of-Pocket and Subcontract Costs**

1. Subcontractor charges directly related to the Project will be reimbursed at cost. All subcontract costs require approval of the Local Entity.

**D. Payment of Services**

Payment will be made on the basis of and in accordance with the following schedules:

1. The Consultant will be reimbursed for the actual payroll costs as set forth in Article III, Section 2, Paragraph A, for the time employees are directly used on work necessary to fulfill the terms of this Agreement. To this amount will be added the general administrative overhead costs as set forth in Article III, Section 2, Paragraph B.
2. The Consultant will be reimbursed for actual out-of-pocket expenses and subcontract costs as specified in Article III, Section 2, Paragraph C.
3. The Consultant will be paid a fixed fee (profit) not to exceed \$ *<\$ amount and amount written out>* Dollars.
4. The total payment to the Consultant (including payroll costs, out-of-pocket expenses, subcontract costs and fixed fee) for the work covered under this Agreement will not exceed \$ *<\$ amount and amount written out>* dollars.

**Exhibit 5-5 – CONSULTANT SERVICES AGREEMENT**  
(Continued)

5. All costs related to this project are to be in conformance with 48 CFR 31, *Contract Cost Principles and Procedures*.

E. Partial and Final Payments

Partial payments of the foregoing will be made at monthly intervals as the work progresses, based upon certified invoices received, compatible with current practices and acceptable to the Local Entity. Payments on the fixed fee will be based on the estimated percentage of completion of work. Every request for payment must include one original and *<number of required copies>* copies of the certified invoice, along with *<number of required copies, at least one>* copies of the progress report.

When the Consultant completes the work in accordance with the terms of the Agreement, the Local Entity's liaison will certify the completion and recommend final acceptance. The Local Entity will notify the Consultant that acceptance has been made.

The Local Entity reserves the right to withhold payment of the Consultant's final payment until any and all just claims filed with the Local Entity against the Agreement have been settled. Accomplishment of an affidavit on the final claim by the Consultant will constitute full Acceptance by the Consultant of the total amount shown as the entire amount due the Consultant under the agreement.

F. Consultant's Proposal and Cost Estimate

The attached Consultant's Proposal and Cost Estimate, Exhibit B, is made a part of this Agreement. If this document conflicts with the Agreement, the Agreement will govern.

### **SECTION 3 – INSPECTION AND AUDIT**

All books, papers, records, payrolls, vouchers and invoices relating to costs and expenditures incurred as to the performance of the services specified in Article I by the Consultant or any of its subcontractors will be made available to the Local Entity, MDT, the Legislative Auditor and Legislative Fiscal Analyst, the Federal Highway Administration or their authorized representatives, for audit and review, at the Consultant's respective offices, at all reasonable times during the Agreement period and for 3 years from the date of final MDT payment.

### **SECTION 4 – TYPE OF CONTRACT**

The Consultant agrees that this is a Consultant Services Agreement and that they are an independent contractor and not an employee of the Local Entity or MDT. It is further understood by the Consultant that no deductions from the payments under this Agreement for Federal or State income tax, FICA (social security), retirement or other reasons will be withheld by the Local Entity or MDT.

## **Article IV – Miscellaneous Provisions**

### **SECTION 1 – TERMINATION OR ABANDONMENT**

The Local Entity may terminate this Agreement at any time with 15 days written notice to the Consultant, for any of the following:

- If it is in the best public interest to abandon, reduce or change the Project covered by this Agreement. If the Local Entity believes this is appropriate, this Consultant Agreement will be terminated.
- Adverse weather, flood, earthquake, etc., or any other condition beyond the control of the Local Entity and/or Consultant, which may adversely affect the work to be performed, this Agreement may be terminated by the Local Entity.

## **Exhibit 5-5 – CONSULTANT SERVICES AGREEMENT** (Continued)

- A change in the scope, character or complexity of all or any part of the work under this Agreement, the Local Entity may decide that it is in the best public interest to terminate this Agreement.
- If services of the Consultant prove unsatisfactory or because of the failure of the Consultant to perform its work with due diligence or to complete the required services or any part of it within the time limits specified, this Agreement may be terminated.

In these cases, the Consultant will be paid the reasonable value of services rendered up to the time of termination. The reasonable value of services will be based on the method of payment as defined in the Agreement. The approved percentage of completion will be determined by mutual agreement between the Local Entity and the Consultant.

## **SECTION 2 – GENERAL COMPLIANCE WITH LAWS**

- A. The Consultant will observe and comply with existing laws, ordinances and regulations.
- B. The Consultant agrees to indemnify and hold harmless the Local Entity, State and MDT, their officials, agents and employees, while acting within the scope of their duties, from and against all claims, demands and causes of action of any kind or character (including reasonable attorneys fees and costs of defense), to the extent caused by the Consultant's non-negligent but wrongful acts, errors or omissions arising out of services performed or in any way resulting from a non-negligent but wrongful act, error or omission of the Consultant and/or its agents, employees, subcontractors or representatives under this Agreement.
- C. The Local Entity agrees to indemnify and hold harmless the Consultant from and against all claims, demands and causes of action of any kind or character (including reasonable attorneys fees and costs of defense), to the extent caused by the Local Entity's non-negligent but wrongful acts, errors or omissions arising out of services performed or in any way resulting from a non-negligent but wrongful act, error or omission of the Local Entity and/or its agents or employees under this Agreement.
- D. Furnish copies of the Local Entity's existing as-built construction and right-of-way plans (as available).
- E. The Local Entity will not reuse, make or permit any modifications to the Consultant's final design and drawings without the prior written authorization of the Consultant. The Local Entity will make no claim against the Consultant arising from any unauthorized reuse or modification of the design and drawings.

## **SECTION 3 – OWNERSHIP OF DOCUMENTS**

On completion of services or termination of this Agreement, all drawings, map originals, survey notes, field books, calculations, reports and all data used will become the property of the Local Entity. Following their acceptance of these documents, the Consultant will be indemnified, defended and held harmless only for any changes or revisions to the plans and related documents that the Consultant prepares under this Agreement that are made without Consultant's knowledge and written consent.

## **SECTION 4 – SUBCONTRACTING, ASSIGNMENT OR TRANSFER**

The subcontracting, assignment or transfer of any part of this Agreement, except as shown in the Consultant's proposal, is prohibited unless prior written approval is obtained from the Local Entity. Subcontracts that exceed \$10,000 in cost will contain all required provisions of the prime agreement.

### **Exhibit 5-5 – CONSULTANT SERVICES AGREEMENT (Continued)**

**SECTION 5 – CHANGES OF WORK**

If, during the term of the Agreement, additional services are required, other than those services specified above, or major changes in the work become necessary or desirable, the Local Entity may make written request to the Consultant to perform these services or make changes. If the Consultant is of the opinion that any work requested beyond the scope of this Agreement and constitutes extra work, the Consultant will promptly notify the Local Entity in writing prior to performing work. If the Local Entity agrees that this work does constitute extra work, the Consultant will be reimbursed on a mutually agreed basis, and additional time for completion of the Agreement shall be given. Before work is undertaken, the Consultant and the Local Entity will, by mutual written agreement, determine the scope of the work and the cost thereof.

Compensation will be determined before the operations begin and as soon as circumstances permit. If a mutual agreement is not reached in negotiations for an increase in work, the Local Entity will use other methods to accomplish the work.

**SECTION 6 – MEETINGS AND PRESENTATIONS**

The Consultant and its subcontractors, when directed by the Local Entity, will attend and make appropriate presentations at meetings conducted for the purpose of discussing with the public or local, State and Federal officials the effect and objectives of the proposed project or other matters pertaining to the Project.

The Consultant will prepare exhibits and visual aids necessary to clarify the proposed project to the participants of the meetings.

**SECTION 7 – ACCURACY OF WORK**

The Consultant will make necessary revisions or corrections resulting from errors and omissions on the part of the Consultant without additional compensation (see Art.I, Sec.1).

If any errors are made by the Consultant in any phase of its work under this Agreement that may require additional field or office work, the Consultant will be promptly notified in writing and will be required to perform additional work as necessary to correct these errors without undue delay and without additional cost to the Local Entity. Acceptance of its work will not relieve the Consultant of the responsibility for subsequent correction of any errors and the clarification of any known ambiguities.

Construction problems or conflicts arising as a Local Entity of design or plan errors or omissions will be considered the Consultant's responsibility. The Local Entity will be responsible for any unreasonable interpretation it makes of the Consultant's design, drawings and plans. The Consultant will be notified of all errors and omissions and will meet with Local Entity representatives to assist in determining corrective action at no cost to the Local Entity. If design errors are found to be a cause of the construction problem or conflict, the Consultant will have the opportunity to be involved in discussions to determine the desired corrective action. Following discussions between the Local Entity and the Consultant, the Local Entity will provide the Consultant with its written demand letter for the total costs of the corrective action.

The Consultant agrees to provide proof of errors and omissions insurance coverage not less than \$1,000,000 (one million dollars) for the entire period of the Project for which consultant services are required under this Agreement.

**SECTION 8 – VENUE**

In the event of litigation, venue shall be the *<Judicial District number>* Judicial District in and for the County of *<county name>*, State of Montana, and the Agreement shall be interpreted according to the laws of Montana.

**Exhibit 5-5 – CONSULTANT SERVICES AGREEMENT**  
(Continued)

**SECTION 9 – NONDISCRIMINATION**

Reference is made to Exhibit C, which by this reference is hereby made a part of this Agreement.

**SECTION 10 – CERTIFICATION**

The parties to this Agreement have each executed a certification. The certification of the Consultant, labeled Exhibit A, is attached and by this reference made a part of this Agreement. The certification of the Local Entity, labeled Exhibit B, is attached and by this reference made a part of this Agreement.

**SECTION 11 – DBE GOAL**

The Consultant will make all reasonable efforts to use MDT's currently certified DBE firms for applicable subcontracting services that are necessary. The Appendix CTEP Manual of CSA contains instructions for accessing the current Internet listing of MDT's certified DBE firms. Contact the MDT Compliance Section, should subcontracting opportunities arise.

Each invoice submitted in accordance with Article III, Section 2E, must state the established DBE goal for the project and the current and cumulative amounts expended to date towards that goal.

**SECTION 12 – WORKER'S COMPENSATION COVERAGE**

The Consultant agrees to provide proof that he has a policy for Worker's Compensation Insurance or proof that they have elected to be exempt from coverage and this election has been approved by the Department of Labor and Industry. The Consultant agrees to maintain Worker's Compensation Coverage or be self-insured for the entire period of this Agreement.

**SECTION 13 – CONSULTANT'S PLANS RESPONSIBILITY**

The Consultant will be responsible for the quality of the final plans package (see Art. I, Sec. 1), as the Local Entity will not make a detailed check of the plans. The Consultant will stamp and sign the title sheet of the final contract plans package. The Consultant's name will be shown on all plan sheets of the Project. If Specialty Plans are involved (e.g., Bridge Plans, Sewer/Water Plans prepared for a city and included into the Local Entity's plan package), the Consultant will stamp and sign each page of the plans. The final plans package will be assembled and shall take on the form of a Project Manual and drawings as defined in the *CTEP Manual*.

**SECTION 14 – ENTIRE AGREEMENT AND MODIFICATIONS**

This Agreement, including referenced or attached documents, is the entire agreement of the parties. Any modification requires a written amendment signed by authorized representatives of both parties.

**SECTION 15 – THIRD PARTY BENEFICIARIES**

This Agreement is not intended to create anyone as a third party beneficiary or to authorize anyone not a party to the Agreement to maintain an action for damages pursuant to the terms or provisions of this Agreement.

**Exhibit 5-5 – CONSULTANT SERVICES AGREEMENT**  
(Continued)

**SECTION 16 – CONFIDENTIALITY OF INFORMATION**

The Consultant understands that the information contained in this Agreement will be part of the public bidding process, and that it must remain confidential between the Consultant and the Local Entity until the Project has been awarded. Failure by the Consultant or its employees to keep that information confidential is considered a breach of this Agreement, and may require the Local Entity to have another consultant rework the product of this Agreement, potentially delaying the Project and costing the Local Entity additional funds. Such an act by the Consultant will be a violation of Art. IV, Sec. 2, and subject all persons or parties involved to possible debarment under ARM Sec. 18.d.101 et seq.

In witness, the parties have sealed this Agreement by their signatures.

**Approved for the Consultant**

By/Date: \_\_\_\_\_

By/Date: \_\_\_\_\_

**Federal Employer's ID Number**

Attest By/Date: \_\_\_\_\_

**Approved for the Local Entity**

By/Date: \_\_\_\_\_

Attest By/Date: \_\_\_\_\_

**Approved for Legal Content**

By/Date: \_\_\_\_\_

Local Entity Legal Services

**Exhibit 5-5 – CONSULTANT SERVICES AGREEMENT**  
(Continued)

## Exhibit A – CERTIFICATE OF CONSULTANT

I am a duly authorized representative of the firm of *<consultant firm name>*, whose address is *<consultant firm location – address, city, state, zip code>* and I hereby certify as follows:

1. That neither the firm nor any person associated therewith in a management capacity:
  - a. has employed or retained for commission, percentage, brokerage, contingent fee or other consideration, any firm or person (other than a bona fide employee working solely for me or the above consultant) to solicit or secure this Agreement;
  - b. has agreed, as an express or implied condition for obtaining this Agreement, to employ or retain the services of any firm or person in connection with carrying out the Agreement; or
  - c. has paid or agreed to pay to any firm, organization or person (other than a bona fide employee working solely for me or the above consultant), any fee, contribution, donation or consideration of any kind for, or in connection with, procuring or carrying out the Agreement; with no exceptions.
2. That neither the firm, nor any person who has critical influence on or substantial control in the firm, nor any person associated therewith in a management or supervisory capacity:
  - a. is currently under suspension, debarment, voluntary exclusion or determination of ineligibility by any Federal agency or any agency of any State government;
  - b. has, within a three-year period preceding this Agreement, been convicted of or had a civil judgment rendered against them for commission of fraud; a criminal offense in connection with obtaining, attempting to obtain or performing a public transaction or contract under a public transaction; violation of antitrust statutes; commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property;
  - c. is currently indicted for or otherwise criminally or civilly charged by a governmental entity with commission of any of the offenses listed in paragraph 2.b of this certification; or
  - d. has had one or more public transactions terminated for cause or default within a three-year period preceding this Agreement.
3. That to the best of my knowledge and belief:
  - a. no Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a member of Congress, an officer or employee of Congress or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan or cooperative agreement; and

### Exhibit 5-5 – CONSULTANT SERVICES AGREEMENT (Continued)

- b. if any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

I acknowledge that this certificate is to be furnished to the *<Local Entity name>*, State of Montana, Department of Transportation and the Federal Highway Administration, in connection with this Agreement involving participation of Federal-aid highway funds, and is subject to applicable State and Federal laws, both criminal and civil.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

**Exhibit 5-5 – CONSULTANT SERVICES AGREEMENT**  
(Continued)

**Exhibit B – CERTIFICATE OF THE <LOCAL ENTITY NAME>**

I hereby certify that I am the <official title> of the <Local Entity name> of the State of Montana, and that the above consulting firm, or his representatives, has not been required, directly or indirectly, as an express or implied condition in connection with obtaining or carrying out this Agreement, to:

- a. employ or retain, or agree to employ or retain, any firm or person, or
- b. pay, or agree to pay to any firm, person or organization, any fee, contribution, donation or consideration of any kind; with no exceptions.

I acknowledge that this certificate is to be furnished the Montana Department of Transportation and Federal Highway Administration in connection with this Agreement involving participation of Federal-aid highway funds, and is subject to applicable State and Federal laws, both criminal and civil.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Chief Executive's Signature

## EXHIBIT “C” NOTICE TO CONSULTANTS

During the performance of this Agreement, the Consultant, for itself, its assignees and successors in interest (hereinafter referred to as the “Consultant”), agrees as follows:

### A. COMPLIANCE WITH TITLE VI OF THE CIVIL RIGHTS ACT OF 1964 FOR FEDERAL-AID CONTRACTS

1. Compliance with Regulations: The Consultant shall comply with all Regulations relative to nondiscrimination in Federally-assisted programs of the Department of Transportation, 49 Code of Federal Regulations, Part 21, as they may be amended (hereafter referred to as the Regulations), which are incorporated by reference and made a part of this Agreement, even though only State funding is here involved.
2. Nondiscrimination: The Consultant, with regard to the work performed by it during the Agreement, shall not discriminate on the grounds of sex, race, color, or national origin in the selection and retention of subconsultants, including procurement of materials and leases of equipment. The Consultant shall not participate either directly or indirectly in the discrimination prohibited by 49 CFR 21.5.
3. Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations, whether by competitive bidding or negotiation by the Consultant for work to be performed under a subcontract, including procurements of materials or leases of equipment, any potential subconsultant or supplier shall be notified by the Consultant of the Consultant's obligations under this Agreement and the Regulations relative to nondiscrimination.
4. Information and Reports: Consultant will provide all reports and information required by the Regulations, or directives issued pursuant thereto, and permit access to its books, records, accounts, other sources of information and its facilities as may be determined by the Local Entity, MDT or the Federal Highway Administration (FHWA) to be pertinent to ascertain compliance with Regulations or directives. Where any information required of a Consultant is in the exclusive possession of another who fails or refuses to furnish this information, the Consultant shall so certify to the Local Entity, MDT or the FHWA as requested, setting forth what efforts it has made to obtain the information.
5. Sanctions for Noncompliance: In the event of the Consultant's noncompliance with the nondiscrimination provisions of this Agreement, Local Entity or MDT may impose sanctions as it or the FHWA determines appropriate, including, but not limited to,
  - a. withholding payments to the Consultant under the Agreement until the Consultant complies, and/or
  - b. cancellation, termination or suspension of the Agreement, in whole or in part.

6. **Incorporation of Provisions:** Consultant will include the provisions of paragraphs (1) through (6) in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. Consultant will take such action with respect to any subcontract or procurement as the Local Entity, MDT or the FHWA may direct to enforce such provisions including sanctions for noncompliance: Provided, however, that in the event Consultant is sued or is threatened with litigation by a subconsultant or supplier as a result of such direction, the Consultant may request the Local Entity to enter into the litigation to protect the interests of the Local Entity or State, and, in addition, the Consultant or the Local Entity may request the United States to enter into such litigation to protect the interests of the United States.

**B. COMPLIANCE WITH MONTANA GOVERNMENTAL CODE OF FAIR PRACTICES, 49-3-207, MCA**

In accordance with Section 49-3-207, MCA, Consultant agrees that for this Agreement all hiring will be made on the basis of merit and qualifications and that there will be no discrimination on the basis of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin by the persons performing the Agreement.

**C. COMPLIANCE WITH AMERICANS WITH DISABILITIES ACT (ADA)**

1. Consultant will comply with all regulations relative to implementation of the AMERICANS WITH DISABILITIES ACT.
2. Consultant will incorporate or communicate the intent of the following statement in all publications, announcements, video recordings, course offerings or other program outputs: "The Consultant will provide reasonable accommodations for any known disability that may interfere with a person in participating in any service, program or activity offered by the Consultant. In the case of documents, recordings or verbal presentations, alternative accessible formats will be provided. For further information call the Consultant."
3. All video recordings produced and created under the Agreement will be closed-captioned.

**D. COMPLIANCE WITH PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES IN DEPARTMENT OF TRANSPORTATION FINANCIAL ASSISTANCE PROGRAMS, 49 CFR 26.**

Each Agreement the Local Entity signs with a Consultant (and each subcontract the prime contractor signs with a subcontractor) must include the following assurance: "The Consultant, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Consultant shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the Consultant to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate."

**Exhibit 5-5 – CONSULTANT SERVICES AGREEMENT**  
(Continued)

## EXHIBIT “D” CTEP CONSULTANT COST ESTIMATE

	Labor Categories					
Work Elements - Tasks						
Total Hours						

Labor Categories	Total Hours	Base Wage Rate	Labor Cost
		\$	\$
		\$	\$
		\$	\$
Total Labor Cost		\$	\$

Total Labor Cost		\$ _____
Fringe Benefit Cost	_____ % x Total Labor Cost	\$ _____
G&A Overhead Cost	_____ % x Total Labor Cost	\$ _____
Total Payroll Cost		\$ _____

Direct Expenses	
Per Diem	\$ _____
Mileage	\$ _____
Copies/Prints	\$ _____
Computer	\$ _____
Subcontractor Expenses	\$ _____

Profit/Fixed Fee	\$ _____
------------------	----------

Preliminary Engineering Costs	\$ _____
-------------------------------	----------

Construction Engineering Costs	\$ _____
--------------------------------	----------

Total Project Costs	\$ _____
---------------------	----------

I certify that the cost or pricing data submitted and identified to the Local Entity during the selection and negotiation process is current, complete and accurate as of the date of the agreement on the price.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

## Exhibit “E” Scope of Work and Schedule

### Project Description

*<Enter project description or refer to appropriate sections of the contract.>*

#### Task 1: *<Heading and approximate number of days to complete>*

- A. *<Description of work>*
- B. *<Description of work>*
- C. *<Description of work>*

#### Task 2: *<Heading and approximate number of days to complete>*

- A. *<Description of work>*
- B. *<Description of work>*
- C. *<Description of work>*
- D. *<Subcontract name and subcontractor name>*
- E. *<Description of work>*

#### Task 3: *<Heading and approximate number of days to complete>*

- A. *<Description of work>*
- B. *<Description of work>*
- C. *<Description of work>*
- D. *<Description of work>*

<company name>	Invoice No.	<invoice number>
<company address>	Date:	<month, day, year>
<city, state, zip code>	Cost	\$<dollar amount>
<telephone number>	Fixed Fee	\$<dollar amount>
	Total Funded	\$<dollar amount>

**\*\*\*\*INVOICE\*\*\*\***

TO: Mr. Tom S. Martin  
 Consultant Design Engineer  
 Montana Dept. of Transportation  
 2701 Prospect Avenue, PO Box 201001  
 Helena, Montana 59620-1001

FOR: <description of services>

PERIOD: <date> through <date>

	Current	Cumulative
Direct Project Labor	\$<dollar amount>	\$<dollar amount>
Fringe Benefit and Overhead Rate		
@ <overhead rate>%	\$<dollar amount>	\$<dollar amount>
Subtotal Burdened Labor	\$<dollar amount>	\$<dollar amount>
Consultant	\$<dollar amount>	\$<dollar amount>
Subcontractor	\$<dollar amount>	\$<dollar amount>
Travel	\$<dollar amount>	\$<dollar amount>
<description of labor/cost, e.g., printing, reproduction>	\$<dollar amount>	\$<dollar amount>
<description of labor/cost, e.g., communications>	\$<dollar amount>	\$<dollar amount>
<description of labor/cost, e.g., CADD>	\$<dollar amount>	\$<dollar amount>
Subtotal Other Direct Costs	\$<dollar amount>	\$<dollar amount>
Total Direct Costs	\$<dollar amount>	\$<dollar amount>
Fee @ 12% of Burdened Labor	\$<dollar amount>	\$<dollar amount>
Less: Fee in Excess of Funding	\$<dollar amount>	\$<dollar amount>
Total Amount Due	\$<dollar amount>	\$<dollar amount>

Please remit to:  
 <company name>  
 <company address>  
 <city, state, zip code>

Certification:  
 I hereby certify this claim is correct and just in all respects and that payment or credit has not been received:

\_\_\_\_\_

<name, title>  
 <company name>

This claim contains no unallowable costs under 48 CFR 31.2

**Exhibit 5-6 – SAMPLE CONSULTANT BILLING INVOICE TO THE LOCAL ENTITY**

**DIRECT LABOR SCHEDULE**

<company name>  
 <company address>  
 <city, state, zip code>  
 <telephone number>

Invoice No. <invoice number>  
 Date: <month, day, year>

Labor Detail	Current Hourly Rate	Current Hours	Current Amount	Previous Hours	Previous Amount	Cumulative Hours	Cumulative Amount
<employee name, title>	\$<dollar amount>	<dollar amount>	\$<dollar amount>	<dollar amount>	\$<dollar amount>	\$<dollar amount>	\$<dollar amount>
<employee name, title>	\$<dollar amount>	<dollar amount>	\$<dollar amount>	<dollar amount>	\$<dollar amount>	\$<dollar amount>	\$<dollar amount>
<employee name, title>	\$<dollar amount>	<dollar amount>	\$<dollar amount>	<dollar amount>	\$<dollar amount>	\$<dollar amount>	\$<dollar amount>
<employee name, title>	\$<dollar amount>	<dollar amount>	\$<dollar amount>	<dollar amount>	\$<dollar amount>	\$<dollar amount>	\$<dollar amount>
<employee name, title>	\$<dollar amount>	<dollar amount>	\$<dollar amount>	<dollar amount>	\$<dollar amount>	\$<dollar amount>	\$<dollar amount>
<employee name, title>	\$<dollar amount>	<dollar amount>	\$<dollar amount>	<dollar amount>	\$<dollar amount>	\$<dollar amount>	\$<dollar amount>
<employee name, title>	\$<dollar amount>	<dollar amount>	\$<dollar amount>	<dollar amount>	\$<dollar amount>	\$<dollar amount>	\$<dollar amount>
<employee name, title>	\$<dollar amount>	<dollar amount>	\$<dollar amount>	<dollar amount>	\$<dollar amount>	\$<dollar amount>	\$<dollar amount>
<employee name, title>	\$<dollar amount>	<dollar amount>	\$<dollar amount>	<dollar amount>	\$<dollar amount>	\$<dollar amount>	\$<dollar amount>
<employee name, title>	\$<dollar amount>	<dollar amount>	\$<dollar amount>	<dollar amount>	\$<dollar amount>	\$<dollar amount>	\$<dollar amount>
<employee name, title>	\$<dollar amount>	<dollar amount>	\$<dollar amount>	<dollar amount>	\$<dollar amount>	\$<dollar amount>	\$<dollar amount>
<employee name, title>	\$<dollar amount>	<dollar amount>	\$<dollar amount>	<dollar amount>	\$<dollar amount>	\$<dollar amount>	\$<dollar amount>
<employee name, title>	\$<dollar amount>	<dollar amount>	\$<dollar amount>	<dollar amount>	\$<dollar amount>	\$<dollar amount>	\$<dollar amount>
<employee name, title>	\$<dollar amount>	<dollar amount>	\$<dollar amount>	<dollar amount>	\$<dollar amount>	\$<dollar amount>	\$<dollar amount>

Total Direct Labor

**Exhibit 5-6 – SAMPLE CONSULTANT BILLING INVOICE TO THE LOCAL ENTITY**  
 (Continued)

<Local Entity letterhead>  
 <Local Entity name>  
 <Local Entity address>  
 <city, state, zip code>

<date>

<CTEP Project Manager name>

CTEP Project Manager  
 Montana Department of Transportation  
 P.O. Box 201001  
 Helena, Montana 59620-1001

Re: <project number>  
 <project name>

Dear <CTEP Project Manager name>:

The consultant, <consultant name> has been paid its claims for services provided on the referenced project. Claim <claim number> is the final claim for Preliminary Engineering (PE) services and claim <Local Entity name> is for Construction Engineering (CE) services. Attached are copies of the claims. Please review and provide reimbursement for the Federal portion calculated as follows:

**Claim** <claim number>

\$<claim dollar amount>

×<Federal percentage dollar amount>

=<total PE reimbursement dollar amount>

Consultant claim

Federal percentage

PE reimbursement

**Claim** <claim number>

\$<claim dollar amount>

×<Federal percentage dollar amount>

=<total PE reimbursement dollar amount>

Consultant claim

Federal percentage

PE reimbursement

**TOTAL Consultant Claim Amount =**

\$<total consultant claim dollar amount>

**TOTAL Reimbursement Amount =**

\$<total reimbursement dollar amount>

After payment of these claims, a balance of \$<balance amount> remains on the PE portion and <balance amount> on the CE portion of this contract.

Payment should be directed to the <Local Entity name>, <Local Entity address>. <Indicate any other special payment information>

If you have any questions, please contact me at <Local Entity contact information (phone/email address)>.

Sincerely,

<Local Entity name>

<Local Entity title>

Attachments: <Consultant name> Invoice 7 and 8

## EXHIBIT 5-7 – SAMPLE LOCAL ENTITY BILLING INVOICE TO MDT CTEP



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## Chapter 6

# RIGHT-OF-WAY AND UTILITIES

### 6.1 OVERVIEW

The purpose of this chapter is to provide guidance to Local Entities when faced with the complex issue of acquiring real property. Local Entities that foresee right-of-way or utility relocation as part of their CTEP project should immediately contact the CTEP Section for guidance. In addition, note the following:

- CTEP projects may not incur right-of-way or utility expenses until MDT and FHWA have approved the environmental documents.
- CTEP funds will not be eligible to participate in the cost of condemnation activities.
- All CTEP projects must be on public land or a permanent easement must be in place.

For additional information on right-of-way, see the Montana *Right-of-Way Operations Manual* located on the MDT website.

#### 6.1.1 Requirements

The requirements in this Section provide basic right-of-way and utility references for the Local Entity.

##### 6.1.1.1 Federal Requirements

The Local Entity should review and comply with the following applicable Federal right-of-way requirements:

- Title VI of the *Civil Rights Act of 1964*;
- Title IV of the *Surface Transportation and Uniform Relocation Assistance Act of 1987*;
- *Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970*, et sequential (Uniform Act);
- 23 CFR 710; *Right-of-way and Real Estate*;
- 49 CFR 24; *Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally-Assisted Programs*; and
- *Uniform Appraisal Standards for Federal Land Acquisitions*.

### **6.1.1.2 State Requirements**

The following are the applicable State right-of-way requirements for the Local Entity review:

- 60-4-109 MCA, *Irrigable Lands Rendered Unusable – Unpaid Construction Costs*;
- 60-4-203 MCA, *Conduct of Sale*;
- 60-4-403 MCA, *Relocation – Costs*;
- 69-4-101 MCA, *Use of Public Right-of-Way for Utility Lines and Facilities*;
- 70-1-105 MCA, *Real or Personal*;
- 70-1-106 MCA, *Real Property Defined*;
- 70-16-201 MCA, *Owner of Land Bounded by Water*;
- 70-30-301 MCA, *Hearing – Judge to Preside – Determinations by Condemnation Commissioners*;
- 70-30-302 MCA, *Assessing Compensation – Date and Measure – Interest*;
- 70-30-313 MCA, *Current Fair Market Value*;
- 70-31-101 MCA, *Relocation Assistance/Fair Treatment of Condemnees (Purpose)*;
- 70-31-301 MCA, *Appraisal, Negotiation and Other Condemnation Policies Mandated*;
- 82-2-101 MCA, *Manner of Locating Claim*;
- 82-2-102 MCA, *Record of Certificate of Location*; and
- *MDT Right-of-Way Operations Manual*.

### **6.1.2 Local Entity Responsibilities**

Local Entities must comply with the above Federal and State requirements during the right-of-way process. Note: these requirements also apply to donated right-of-way. Additional guidance may be found in the FHWA publication, *A Real Estate Acquisition Guide for Local Public Agencies* available on the FHWA website.

MDT contracted services procurement procedures must be followed when procuring appraisal and negotiator services. Fees cannot be based on a percentage of the appraised or assessed value. Negotiations of fees must be on a per parcel basis.

Provide the CTEP Section with a copy of the appraisal report, deeds signed and sealed by the County Clerk and Records office, buy-sell agreements and certification from the Local Entity that the necessary right-of-way has been acquired according to all applicable Federal and State regulations.

MDT will conduct an appraisal review and approve the just compensation. The amount of CTEP funds requested from FHWA will be based on the appraised value. Any amount offered above the appraised value must be paid by the Local Entity. The Local Entity must provide the property owner with a written statement and summary of the basis for the amount established as just compensation for the real property. Compensation for damages to the remaining property is stated separately. The owner must be paid before being asked to surrender possession of the property. The owner of donated property must be informed of their right to receive compensation for the property.

The Local Entity's negotiator should maintain a log of each contact with the property owner to include the date and place of contact, parties of interest contacted, offers made (dollar amounts), counteroffers, reasons settlement could not be reached and any other pertinent data. The report must be signed and dated by the assigned negotiator. Real property must be appraised and reviewed before the initiation of negotiations, and the owner must be given an opportunity to accompany the appraiser during the inspection of the property.

## 6.2 RIGHT-OF-WAY PROCESS

### 6.2.1 Right-of-Way Steps

The right-of-way process can be summarized as follows:

1. Right-of-way Determination. The Local Entity should review the proposed CTEP project to determine whether or not additional right-of-way will be required. If right-of-way is required, include an estimate of right-of-way costs in the CTEP Project Application.
2. Preacquisition. During the project design phase (i.e., the PE phase), the Local Entity and/or its consultant is responsible for conducting any necessary surveys and studies, preparing an initial cost estimate for acquiring the property and gathering any other necessary information prior to acquisition of property.
3. Appraisal. The Local Entity must determine the fair market value of property to be acquired.
4. Acquisition. Once an agreement has been reached between the property owner and Local Entity on the fair market value of the property, the Local Entity will begin the process of acquiring the property for the project.
5. Relocation. If necessary, the Local Entity will provide relocation assistance as required by the *Uniform Act*. See the *MDT Right-of-Way Operations Manual* for more information on relocation assistance.

These steps are further defined in the following sections.

### 6.2.2 Right-of-Way Checklist

A “Right-of-Way Checklist” should be completed on all CTEP projects where the acquisition of additional right-of-way is required. If no additional right-of-way is required, this should be noted in the Local Entity’s project file. This checklist helps the Local Entity ensure that all right-of-way requirements have been properly executed. [Exhibit 6-1](#) provides a copy of this checklist. An electronic copy of this checklist is available on the [CTEP website](#).

### 6.2.3 Preacquisition

Activities that may be accomplished during preacquisition include the following:

- studies to estimate right-of-way acquisition or utility adjustment costs for alternatives under consideration;
- right-of-way and utility cost estimates for the selected alternative;

- access, irrigation and other land service feature studies and justifications;
- social, economic and environmental impact studies;
- studies on the effect of the project on any Section 4(f) or 6(f) lands;
- relocation studies and cost estimates;
- procurement of title and ownership information;
- other right-of-way activities to be performed prior to right-of-way acquisition, up to, but not including appraisals; and
- appraisals, when performance is specifically authorized in advance.

#### **6.2.4    Appraisals**

The Constitution of the State of Montana, Article II Section 29, states that “private property shall not be taken or damaged for public use without just compensation to the full extent of the loss having been first made to or paid into court for the landowner.” Just compensation includes the value of the property and any improvements sought to be acquired by the Local Entity. If the property sought to be acquired constitutes only a part of a larger parcel, just compensation includes the depreciation and damages as outlined in the *MDT Right-of-Way Operations Manual*.

When a Local Entity elects to hire an appraiser to determine the fair market value for the property, an Agreement for Appraisal Services must be executed between the Local Entity and the certified appraiser prior to conducting the appraisal. [Exhibit 6-2](#) provides a copy of this agreement. An electronic copy of this document is available on the [CTEP website](#).

In arriving at a conclusion of just compensation between the property owner and the Local Entity, the Local Entity must prepare an Appraisal Report. The Appraisal Report is a written statement that is independently and impartially prepared by a certified appraiser setting forth an opinion of defined value of an adequately described property as of a specific date, supported by the presentation and analysis of relevant market information. The Report contains the appraiser’s estimate of fair market value, all data on which the opinion is based and a narrative explanation supporting the appraiser’s conclusions. The Appraisal Report is critical for later right-of-way activities (i.e., acquisition, property management, relocation assistance, record purposes). It must be complete and reliable in all its contents.

For more information on appraisals, review the *MDT Right-of-Way Operations Manual* available on the MDT website.

### **6.2.5     Acquisitions**

#### **6.2.5.1     Voluntary Acquisitions**

A Local Entity with condemnation authority can participate in the voluntary acquisition process if it is stated in writing that they forfeit this right if negotiations with the property owner fail (49 *CFR* 24.101). See [Exhibit 6-3](#) for a copy of the “Waiver of Procedures and Rights” form. An electronic copy of this document is available on the [CTEP website](#). For additional guidance, review 49 *CFR* 24.101(a)(1) for conditions applicable to voluntary transactions and 49 *CFR* 24.101(a)(2) for conditions applicable to agencies that do not have condemnation authority.

To document acquisition of property on a voluntary basis, the Local Entity should complete the “Voluntary Acquisition File Checklist.” See [Exhibit 6-4](#) for a copy of this checklist. An electronic copy of this document is available on the [CTEP website](#).

#### **6.2.5.2     Other Acquisition Considerations**

The Local Entity should also consider the following:

1.     Donations. The local property owner may elect to donate the property to the project. For donations falling under the *Uniform Act*, the right-of-way file should contain documentation stating that the property owner was informed of their rights when agreeing to the donation. In addition, the file must include a copy of the deed for the donated property. See [Exhibit 6-3](#) for a copy of the “Waiver of Procedures and Rights” form. For further information, see the *MDT Right-of-Way Operations Manual*.
2.     Uneconomic Remnant. If the Local Entity acquires only a portion of land and the remaining portion has little or no utility or economic value, the Local Entity must offer to acquire the uneconomic remnant as part of the total acquisition offer.
3.     Tenant-Owned Improvements. The Local Entity must offer just compensation for any improvements on the acquired property. Just compensation is the dollar amount that the improvement adds to the total value of the real property, or the salvage value of the improvement, whichever is greater.
4.     Owner Retention of Improvements. If a property owner chooses to remove improvements that have been included in the fair market appraisal of the property, the Local Entity may subtract the salvage value of the removed improvements from the purchase offer.
5.     Rental Payments. If the Local Entity agrees to allow the property owner to remain on the property for a period of time following payment for acquisition, the Local Entity may charge the owner rent.

### 6.2.5.3 Acquisition of Encroachment or Enhancement Permits

Projects on MDT right-of-way require either an encroachment or enhancement permit, or both. The following describes these permits:

1. Encroachment Permits. An encroachment is any installation, device, object or occupancy that is located at, above or below the grade line of the highway and within the right-of-way limits, and that is not installed as part of the highway facility by MDT. For the purposes of a CTEP project, an encroachment permit allows a CTEP project to occupy and the local entity access to MDT's right-of-way. MDT is still responsible for maintaining the right-of-way around the encroachment. If a specific encroachment is deemed acceptable by MDT, an encroachment permit may be obtained from the District Maintenance office. Encroachment permits are revocable with or without justification within specified period (typically 30 to 45 days) after the Local Entity has been notified by MDT. Encroachments include, but are not limited to the following within the right-of-way:
  - overhanging projections of signs, where the base is installed off the right-of-way;
  - fences, walls and gates;
  - abandoned vehicles and equipment;
  - trails or pathways for use by off-road vehicles (e.g., ATVs, snowmobiles);
  - advertising devices, including political banners;
  - buildings or structures;
  - projections from buildings (e.g., stoops, decks, porches);
  - tree plantings or landscaping;
  - grazing livestock;
  - approaches in violation of MDT Access Control Policy;
  - excavations or fill material; and
  - private signs, emblems, symbols, posters, monuments, etc.
2. Enhancement Permits. Enhancement Permits are issued to the Local Entity for a transportation purpose and are typically revocable after a 10- or 20-year period. Enhancement Permits may be cancelled if the right-of-way is need for a transportation project or if the Local Entity fails to maintain the property. The MDT Right-of-Way Bureau issues these permits. MDT retains ownership of the property; however, the Local Entity is required to maintain the property. The Local Entity is not permitted to make any changes to the property without MDT approval.

Contact the CTEP Section or the District Maintenance Chief, through the MDT District Liaison, for more information on either permit.

### **6.2.6     Relocation**

The Federal requirements for relocation of households or businesses are extensive and extremely complex. Local Entities are strongly encouraged to design their CTEP project to avoid actual or potential relocation. Local Entities who foresee or contemplate a relocation action as part of their project should contact the CTEP Section immediately for further guidance.

For more information on relocation, review the *MDT Right-of-Way Operations Manual* located on the MDT website.

### **6.2.7     Record Keeping Requirements**

The Local Entity is responsible for maintaining documentation on each property acquired in a right-of-way file. The Local Entity is responsible for retaining this file for at least five years after the project is complete. At a minimum, this file should include the following items:

- a description of the property and reason for acquisition;
- appraiser contracts;
- copy of the invitation to the property owner to accompany appraiser during the appraisal;
- records of any negotiations with the property owner;
- copy of any materials supplied by the property owner to determine just compensation;
- copy of appraisals;
- copy of the Written Offer to Purchase;
- the voluntary agreement between the Local Entity and the individual seller;
- donation agreement, if applicable, and a copy of any written agreements to waive or modify benefits or compensation;
- signed Waiver of Procedures and Rights under the *Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970*;
- purchase price of the property;
- copy of the contract for sale;
- evidence of payment;

- copy of settlement costs; and
- recorded deed of property.

### **6.2.8    Property Management**

Property management is the control and administration of land and improvements from the time the title vests in the Local Entity until final disposal. This includes the maintenance and protection of improvements acquired and the responsibility for occupancy, rental and disposition by sale or demolition, as well as the rental, lease or sale of excess lands.

For a CTEP project, the Local Entity should establish property management policies and procedures to ensure control and administration of excess lands and improvements acquired for right-of-way purposes. For more information on property management, the Local Entity should review the *MDT Right-of-Way Operations Manual* located on the MDT website.

## **6.3 UTILITIES**

### **6.3.1 Procedures**

There may be occasions where utilities must be relocated to construct an enhancement project. An agreement must be made between the Local Entity and utility company establishing who is responsible for moving the utility and, if any payment is required, the amount the Local Entity will pay the utility company to move the utility. Montana Statutes requires Local Entities to provide 75% of the reimbursement costs for relocating public utilities that are located within existing public rights-of-way. Both public utilities and non-utilities located outside of public rights-of-way are reimbursed for all costs, provided they can show a valid, prior existing right by an easement or other instrument.

If the utility work is on the State highway right-of-way, the Local Entity will coordinate any utility work with the MDT Utilities Section. The MDT Utilities Section will be responsible for preparing any agreements with the utility company. If the utility work is wholly on the Local Entity right-of-way, the Local Entity will be responsible for coordinating directly with the utility company. This also includes the preparation and execution of necessary utility agreements.

A Utilities Checklist can be found in [Exhibit 6-5](#) and is also located on the [CTEP website](#).

For more information on utilities, see the *MDT Right-of-Way Utilities Manual* located on the MDT website.

### **6.3.2 Agreements**

The following are the two types of agreements typically used between MDT/Local Entity and the utility company:

1. **Fast Process Utility Agreement.** The MDT Right-of-Way Bureau has developed a Fast Process Utility Agreement that is typically negotiated with the utility company to relocate utilities. This agreement may also be used by the Local Entity for utility relocations relative to the CTEP project. This type of agreement is limited to minor utility relocations necessary to accommodate a construction project. Project-related utility excavations are eligible, where it is necessary to obtain actual elevations or depths to design around existing utilities, or to determine the extent of conflict with a construction project.

A cost estimate is prepared by the utility company. This estimate is then incorporated into the agreement. The agreement estimate sheet serves as the Local Entity approval format, the work completion certification and the final bill.

The requirements for using a Fast Process Utility Agreement include the following:

- Fast Process Utility Agreements cannot exceed \$50,000 of the Local Entity's cost share (CTEP plus local match) of the proposed utility relocation.
  - Fast Process Agreements can be lump sum agreements or unit cost agreements.
  - Final bills must be submitted by the Local Entity to the CTEP Section for payment no later than 60 days after the work is completed.
2. Standard Utility Agreement. Standard Utility Agreements are the contracts entered into between the Local Entity and a utility company, railroad, city or county to relocate and pay for facilities in conflict with a CTEP project.

A cost estimate is prepared by the utility company. This estimate is incorporated into the agreement.

The requirements for using a Standard Utility Agreement include the following:

- The costs typically exceed \$50,000 of Local Entity cost share (CTEP plus local match) of the proposed utility relocation.
- Standard Utility agreements can be lump sum, unit cost or actual cost agreements.
- Final bills must be submitted by the Local Entity to the CTEP Section for payment no later than 365 days after the work is completed.

Project Name: \_\_\_\_\_  
Project Number: \_\_\_\_\_

## RIGHT-OF-WAY CHECKLIST

1. Yes ☐ No ☐ Will consultant services be used for any part of the right-of-way/easement acquisition? If yes, and those costs are to be reimbursed with CTEP funds or counted toward the local match, MDT CTEP contracted services selection procedures must be used.
2. Yes ☐ No ☐ Has the CTEP Section been provided with an accurate description of any right-of-way to be acquired along with an estimate of its value? If no, provide the CTEP Section with this information before proceeding with the acquisition.
3. Yes ☐ No ☐ Has an appraisal and an appraisal review of the proposed new right-of-way been completed? An appraisal must be completed and submitted to the CTEP Section. MDT will conduct the appraisal review to ensure compliance with Federal requirements.
4. Yes ☐ No ☐ Has MDT approved just compensation to be paid for all additional right-of-way?
5. Yes ☐ No ☐ Have negotiations been conducted according to Federal, State and local requirements? MDT may review all negotiation agreements for the purchase of right-of-way to ensure compliance with Federal and State requirements.
6. Yes ☐ No ☐ Has the required certification been submitted to the CTEP Section? Local Entities must submit certification that right-of-way has been acquired according to all applicable Federal and State regulations. Certification must be signed by a local elected official and accompanied by the deed signed and sealed by the County Clerk and Records Office, and the Buy-Sell Agreement or Donation Statement (if applicable).

\_\_\_\_\_  
Preparer's Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Local CTEP Administrator

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

### EXHIBIT 6-1 – RIGHT-OF-WAY CHECKLIST

## AGREEMENT FOR APPRAISAL SERVICES (ACQUISITION)

THIS AGREEMENT, entered into this *<day>* day of *<month>*, *<year>*, by and between the City/County/Tribe of *<name>*, State of Montana, hereinafter referred to as the “Local Entity” and, *<name>* herein after referred to as the “Appraiser.”

WITNESSETH THAT:

WHEREAS, the Local Entity proposes to acquire certain real property and desires that the Appraiser furnish the Local Entity certain services with respect to such property, including an appraisal of each parcel of the property, and the Appraiser represents that he is fully qualified to perform such services and will furnish such services personally; and

WHEREAS, the services to be provided under this Agreement are necessary to achieve the purposes of *<purpose description>* and the *Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Uniform Act)*.

NOW, THEREFORE, the Local Entity and the Appraiser, for the consideration and under the conditions hereinafter set forth, do agree as follows:

### **ARTICLE 1. Property To Be Appraised**

A description of the real property to be appraised, including an identification of any interests in the real property to be specifically excluded from appraisal, are set forth in the attached Exhibit A. A separate appraisal is to be furnished for each “parcel.” The term “parcel” means any tract or contiguous tracts of land in the same ownership, whether any such tract consists of one or more platted lots or a fractional part of a lot. An easement or other separately held interest in two or more parcels shall be considered to be a separate parcel for appraisal purposes and an exception to the title to the parcels so encumbered. An easement in a parcel that is appurtenant to another parcel to be acquired by the Local Entity shall be considered to be part of such other parcel and an exception to the title of the parcel encumbered. Each parcel shall be considered to include all right, title and interest of the owner in or to any adjacent or abutting streets, alleys or other public rights of way.

### **ARTICLE 2. Purpose and Basis of Valuations**

- (a) Purpose and Significance of Appraisals. The appraisals to be furnished under this agreement are required by the Local Entity for its guidance in making fair and impartial determinations of fair market value and the just compensation to be offered to each property owner. The Appraiser shall be guided by those objectives when estimating values. Appraisal reports will be reviewed carefully by the Local Entity. Accordingly, the text of each appraisal report must cover all matters germane to the required valuation findings and provide a full explanation of the Appraiser's reasoning and analyses of the evidences of value, so that a reviewer will be able to follow the Appraiser's analyses and understand how the valuation conclusions were obtained.
- (b) Appraisal Standards. The appraisals under this agreement shall be based on nationally recognized appraisal standards and techniques to the extent that such principals are consistent with the concepts of value and the rules on the admissibility of evidence of value under the eminent domain law of the State. Factors relating to race, color, religion, sex or national origin or to racial, religious and ethnic identification of neighborhoods are not relevant to the estimation of value and shall not be considered in connection with appraisals of residential real property.

## EXHIBIT 6-2 – AGREEMENT FOR APPRAISAL SERVICES

- (c) Date of Valuation. The Appraiser's valuation shall be as of a date concurrent with the preparation of the report, unless the Local Entity has specified another date of valuation.
- (d) Relocation Assistance. The Appraiser's analyses and opinions of property value shall not reflect any allowance for the relocation payments and other assistance provided under Title II of the *Uniform Act*.
- (e) Influence of Project on Property Value. In forming opinion(s), the Appraiser shall disregard any decrease or increase in the fair market value of the real property to be acquired, prior to the date of valuation, caused by the project for which the property is to be acquired, or by the likelihood that the property would be acquired for such project, other than that due to physical deterioration within the reasonable control of the owner. In the case of a partial acquisition, using the before-and-after method of valuation, the Appraiser's opinion of the value of the remaining not-to-be-acquired portion of the property shall reflect any increase or decrease in value attributable to the project. If the determination of changes in value caused by the project is a problem, the Appraiser's report shall cite the ruling followed and source and explain the effect of the ruling on his/her opinion of value.

### **ARTICLE 3. Scope of Appraiser's Services**

- (a) Appraise each parcel. And prepare and deliver to the Local Entity, within <#> calendar days after the date of this agreement, <#> copies of the appraisal reports conforming to the provisions of this agreement. The Appraiser shall personally inspect each parcel, including all buildings, structures, fixtures and other improvements to the property. The Appraiser shall give the owner or designated representative an opportunity to accompany the Appraiser during his detailed inspection of the property. If the owner of a compensable interest in the property or a representative of such owner does not accompany the Appraiser during the inspection, the Appraiser shall include in his appraisal report a copy of his notification to the owner of the opportunity to accompany the Appraiser and evidence of the owner's receipt of such notification. In the process of inspecting the property, the Appraiser shall, as practicable, ascertain the rights of all parties in possession and note for consideration all factual information and comments furnished by the owner or representative relevant to the appraisal.
- (b) Testify as an expert witness. On behalf of the Local Entity in any judicial proceeding involving any property appraised under this agreement. Such services shall include reasonable time that may be required for re-inspection of the property, updating the Appraiser's valuation, participation in pretrial conferences with counsel for the Local Entity and testifying in the judicial proceeding. The compensation for such services shall be determined in accordance with Article 6.
- (c) Modify or furnish supplements. To any appraisal report furnished under this agreement, without additional cost to the Local Entity, if (1) applicable principles of law with respect to the valuation of the property require the modification or supplementing of such appraisal, (2) material omissions, inaccuracies or defects in the appraisal report are discovered after delivery and acceptance of the report by the Local Entity or (3) the Appraiser receives or becomes aware of relevant additional appraisal information in existence prior to the date the appraiser signed the report. If there is a significant delay between the date of valuation and the date of acquisition of any parcel or if the property has been materially altered since the appraisal by a fire, a revised determination of the boundaries of the property to be acquired, or other cause, the Appraisal shall, if requested by the Local Entity, furnish the Local Entity a supplementary report updating this valuation and the supporting data and analyses to a current date. The compensation for such updating of an appraisal shall be determined in accordance with Article 6.

### **Exhibit 6-2 – AGREEMENT FOR APPRAISAL SERVICES**

(Continued)

- (d) Estimate the value of any right or interest proposed to be reserved. Estimate the value of any right or interest proposed to be reserved by the owner in a property appraised by the Appraiser, such as an easement for access to other property of the owner, the right to continue occupancy for an extended period after the Local Entity acquires the property, or the right to remove any building, structure, fixture, or other improvement. The compensation to be paid to the Appraiser for furnishing any such valuation shall be determined in accordance with Article 6.
- (e) Consult with the Local Entity. Consult with the Local Entity and its legal counsel regarding services to be performed by the Appraiser, at such time(s) as may be mutually convenient for the parties to this agreement. The Appraiser shall initiate such consultations whenever he is in doubt as to whether an element of property is real or personal property or needs legal advice on any aspect of the appraisals to be furnished under this agreement. There shall be no charge by any party for such consultations.

#### **ARTICLE 4. Contents of Appraisal Reports**

Each appraisal report to be furnished by the Appraiser under this agreement shall contain certain information and the Appraiser's conclusions and opinions, together with the data and analyses by which they were derived, as set forth below. A separate report shall be submitted for each parcel. However, if more than one parcel is to be appraised, all general data may be included in a separate data volume that is referenced in the separate appraisal reports on the individual parcels. The appraisal report on each parcel shall include the following:

- (a) A summary. This summary should be titled, "Appraisal Report for *<Local Entity name>*" and include the following information:
  - (1) Project name and number.
  - (2) Date of the report.
  - (3) Parcel number, address of the property, brief identification of all interests in the property appraised, and the name of the owner(s) including any tenant-owners.
  - (4) Date(s) of the Appraiser's inspection of the property with the owner(s) or the owner's designated representative, including the name of each owner or representative of an owner who accompanied the Appraiser during his inspection and the interest held in the property or the representative capacity of each such person.
  - (5) The Appraiser's estimate of the fair market value of the entire parcel and the fair market value of the same interest in the land, as if vacant.
  - (6) The limiting conditions of the appraisal, which may include assumptions (i) that the title is good and marketable, (ii) that no responsibility is assumed by the Appraiser for legal matters, especially those affecting the title to the property, (iii) that the legal description of the property and the interest in the property to be appraised, furnished to the Appraiser by the Local Entity, is correct, and (iv) that no survey of the property has been made. Any other appropriate assumption or limiting condition may be added if it has been specifically approved in writing by the Local Entity.
  - (7) The certifications of the Appraiser (i) that he personally made a thorough inspection of the property, (ii) that, to the best of his knowledge and belief, everything contained in the report is true and no relevant and important fact has been omitted, (iii) that neither his employment nor his compensation is contingent on the valuation reported, and (iv) that he has no past, present, or prospective interest (including that of real estate agent or broker) in the property, the parties involved, or any other interest that would conflict in any way with the services performed or the making of an impartial report.

#### **Exhibit 6-2 – AGREEMENT FOR APPRAISAL SERVICES**

(Continued)

- (8) A certification that, in the Appraiser's opinion, the fair market value of the property is (an amount to be stated) as of (the date of valuation).
- (9) The signature of the Appraiser.
- (b) The name and address of the property owner. And the name and the address, if known, of any other party known or believed to hold a separate compensable interest in the property.
- (c) The street address and an accurate description of each parcel. And all interests in the parcel appraised. The property description shall identify all conditions, restrictions, easements, servitudes, and reservations affecting the title. The property description shall specifically exclude and describe any separately held interest in the property that is to be acquired separately or as part of another parcel. The description shall also specifically exclude all separately held interests which are not to be acquired and will not be affected adversely by the Local Entity's project. If there are any separately held interests in a parcel, which are to be acquired with other interests in the same parcel, such as leaseholds, tenant-owned improvements, life estates, easements, and water, gas, oil, or mineral rights, a description of each such separate interest and the name of its owner shall be furnished.
- (d) Off-record title information. Concerning interests or instruments that affect title, but are not of record, such as leases, options to renew a lease, contracts of sale, and other interests or rights of parties in possession. Such information shall be reported, and if available facts are sufficient, the Appraiser's report shall be based on such additional title information and so noted in the appraisal report. Otherwise, the Appraiser shall refer the matter to the Local Entity and defer completion of the appraisal until the question is resolved.
- (e) Basic property data. Including pertinent information with respect to such matters as (1) the environment and location of the property, (2) the zoning and any restrictive covenants, conditions, or servitudes affecting the available use or occupancy of the land, (3) the assessed value of the real property and the current annual real estate tax burden, (4) the use and occupancy of the property at time of appraisal, (5) the public improvements, services, and utilities serving and providing access to the property, (6) the character, topography, dimensions, and area of the land, (7) the freedom of the property from special hazards, (8) the current rental and rental history of the property, if rented, (9) the estimated annual costs of ownership and for operation and maintenance of the property, and (10) a description of the buildings, structures, and other improvements, if any, including relevant information as to type of improvement, designed use, construction materials and finish, equipment, dimensions, floor area, age, condition, space or room arrangement, functional utility, and any other characteristics or attributes of the improvements germane to the value of the real property. The appraisal report shall contain a general sketch plat showing the shape and dimensions of the land, the location of the principal improvements on the land, the location of the principal improvements on the land, the location of any easements in the land, and the abutting streets, alleys, or other public rights of way. The report shall also include such photographs, each clearly identified, as may be appropriate.
- (f) Report of any condition or occupancy of the property in violation of law. That may affect the value of the property.

**Exhibit 6-2 – AGREEMENT FOR APPRAISAL SERVICES**

(Continued)

- (g) The Appraiser's opinion as to the highest and best use for the property. The appraisal report shall also include the Appraiser's opinions as to any other use(s) for which the property is reasonably suitable or adaptable. If the property is unused vacant land or the highest and best use is not self-evident or is found to differ significantly from the present use, the appraisal report shall contain the analyses by which the Appraiser reached his conclusions as to the highest and best use and as to the relative suitability or adaptability of the property for any other use(s) for which the property could reasonably be considered to be suitable or adaptable. The analysis of a potential use shall include consideration of relevant matters, such as the suitability of the location, the environment and the legal and physical attributes of the property for such use, the estimated cost, if any, of converting the property to such use, and the supply, sale price levels, and relative desirability of other properties that would compete for the same kind of use. The analysis of the property for the future use or uses found to be the highest and best use is part of the process of appraising the property and, therefore, may be included in the valuation analysis furnished in accordance with Paragraph 4(h) below.
- (h) The opinion of the Appraiser as to the fair market value of the property. The appraisal report shall contain a description of the reasoning process used by the Appraiser in reaching his conclusion as to value and all data and analyses needed to explain and support his valuation. The supporting data and analyses furnished in the appraisal report shall include, the following:
- (1) An analysis of the property, from the point of view of evaluating the effect of its characteristics and attributes on its value for the available use or uses for which the property is best suited. Particular attention shall be given to the characteristics of the property most relevant to its value, such as, in the case of an investment property, the income potential and the expenses of ownership, maintenance, and operation.
  - (2) An identification of the most recent sale of each property appraised and any other sales of such property during the last (5) years preceding the appraisal. Such sale(s) of the property appraised and all recent sales of comparable properties considered by the Appraiser in forming his opinion(s) of fair market value shall be verified insofar as practical. The information furnished with respect to each such sale shall include, among other pertinent facts, the names of the grantor and grantee, the date of the sale, the sale price, any special terms or conditions or circumstances of the sale that affected the transaction, and a description of the property and its condition at time of sale in sufficient detail for use in making the appraisal.
  - (3) The analyses that constitute the principal basis for the Appraiser's opinion of the fair market value. The appraisal report shall contain the Appraiser's evaluation with respect to previous sales of the property appraised and any recent offer of the owner to sell the property. The appraisal report shall also contain the Appraiser's analysis of each comparable property and its sale in relation to the property appraised. The Appraiser's analysis shall reflect appropriate allowances for the difference in the time of the sale of the comparable properties and the date of appraisal and the differences in the utility, desirability, and productivity of the properties that are pertinent to their relative value. The appraisal report shall contain a valuation data map showing the location of the property appraised and the comparable properties referred to in the appraisal report.
  - (4) All other information, analyses, and estimates considered by the appraiser to be relevant to the estimation of the fair market value of the property.

**Exhibit 6-2 – AGREEMENT FOR APPRAISAL SERVICES**

(Continued)

- (5) If the property appraised is part of a larger parcel in the same ownership or is less than the entire interest of the owner in the property, the appraisal report shall contain the Appraiser's opinion of just compensation for a taking of such property or interest, using the before-and-after method of valuation as interpreted under State law unless it is obvious that there would be no damages or benefits to the remaining property or interest of the owner. However, if the part or interest to be taken is such a small part of the whole property that the damages for the taking can be more accurately estimated directly, that method may be used if permitted under State law, without estimating the fair market value of the entire property of the owner. The foregoing opinions of the Appraiser shall be supported in his report by the data and analyses by which he reached his conclusions. For information purposes, the appraisal report shall also contain the Appraiser's estimates of the fair market value of the to-be-acquired part of interest as part of the whole property and the net damages or benefits to the remaining property of the owner. If in the opinion of the Appraiser, acquisition of the part of, or interest in, the property proposed for acquisition would leave the owner with an uneconomic remnant, the Appraiser shall furnish a separate estimate of the fair market value of a "parcel" comprising both the parcel proposed for acquisition and the uneconomic remnant. (A remainder parcel or interest shall be considered to be an uneconomic remnant if by itself it has little or no utility or value to the owner.)
- (6) Such maps, plans, photographs, or other exhibits, as necessary, to explain or illustrate the analyses of the Appraiser.
- (7) The Appraiser's evaluation of the indications of value deduced from his separate analyses of the various evidences of value and an explanation of how he reached his final conclusion as to the fair market value of the property.
- i) The opinion of the Appraiser as to the fair market value of the land, as if vacant. The valuation shall be for the same interest in the land as is to be acquired in the real property. The report shall contain information with respect to the available use or uses for which the land would be suitable if vacant, the opinion of the Appraiser as to its highest and best use, and the Appraiser's analysis of the evidences of value and of the use potential by which he reached his conclusions as to the highest and best use of the land and the land value.
- j) A property analysis. If the property is a commercial, industrial, institutional, governmental, or farm property that involves substantial quantities and kinds of fixtures such as machinery and equipment. Any building, structure, fixture, or other improvement, which would be real property if owned by the owner of the land, shall be considered to be real property (even if the improvement is the property of a tenant who has the right to remove it or the obligation to remove it at the expiration of his term). The property analysis must be approved by the Local Entity before the appraisal is completed and, as approved by the Local Entity, shall be included as an exhibit in the Appraiser's report. The property analysis shall list, identify, and classify as to ownership and type of improvement, all items of physical property considered to be part of the real property. The property analysis shall also identify tangible personal property located on the premises to the extent reasonably necessary to prevent misunderstandings as to what is regarded as being real or personal property. Buildings, structures, fixtures and other improvements, including their accessories and spare parts, shall be identified and classified as to ownership and type of property as follows:

**Exhibit 6-2 – AGREEMENT FOR APPRAISAL SERVICES**

(Continued)

- (1) Ownership.
  - (i) Owner of the land.
  - (ii) Each tenant in occupancy.
  - (iii) Each non-occupant owner of any fixtures or other improvements, or personal property on the premises.
- (2) Type of property.
  - (i) Building, structure, or fixed improvement.
  - (ii) Building equipment, removable.
  - (iii) Fixtures, classified as to whether economically removable for reuse, removable for salvage only, or irremovable.
  - (iv) Personal property, identified by type and approximate amounts, or otherwise as needed to prevent misunderstandings on the classification of any item.

If any building, structure, fixture or other improvement is not to be acquired, will not be adversely affected by the Local Entity's project, and will not be required by the Local Entity to be removed, such as a pipeline in an easement not to be acquired, such improvement shall be identified as excluded from the appraisal.

- (k) If machinery and equipment or other fixtures used in a trade or business, farm operation, or institutional or governmental function constitute part of the real property, the appraisal report shall contain a separate schedule that provides separate estimates for each such item, as prescribed below. If there is more than one owner of such items, a separate schedule shall be furnished for each owner. The information and conclusions to be furnished on each item are as follows:
  - (1) Description of the item, including, as appropriate, the manufacturer, model and serial number, size or capacity, age and condition and degree of obsolescence. Accessories and spare parts, special foundations and power wiring and process piping generally shall be listed separately, following the listing of the item(s) to which they apply.
  - (2) Estimate of the replacement cost installed of the item as listed and identified (excluding any elements listed separately). Separately identify the basis of estimated replacement cost (new or used).
  - (3) The contributive (enhancement) value of the item to the fair market value of the real property as a whole.
  - (4) Estimated fair market value of the item for removal from the property at a purchaser's expense. Such value shall be considered to be the probable selling price if the item were offered for sale for removal from the property at the purchaser's expense, allowing a reasonable time to find a purchaser buying with knowledge of the uses and purposes for which it is adaptable and capable of being used, including salvage for serviceable components and scrap when it appears that will provide the highest value.

## Exhibit 6-2 – AGREEMENT FOR APPRAISAL SERVICES

(Continued)

The schedule(s) of estimates shall be consistent, with the property analysis approved by the Local Entity, as provided in Paragraph 4(j). The Appraiser is permitted to use the services of such technical specialists as may be needed to enable the Appraiser to provide valid estimates and sound valuations. The schedule(s) shall be supported by an explanation of the procedures followed in gathering the necessary market information and technical data. The principal purpose of the Appraiser's accompanying narrative, however, must be to explain his analyses and his evaluations of the dollar amount of the overall contribution of the machinery, equipment, and fixtures to the fair market value of the real property as a whole. The report shall contain any layout plans, sketches, or photographs that are reasonable necessary for locating or identifying the facilities or illustrating the Appraiser's analyses.

- (l) If there are separately held interests. In the real property to be acquired, such as easements, leaseholds, air rights, life estates, and oil, gas, or mineral rights, and the division of ownership is not of such character as to destroy the practical unity of the property, the Appraiser shall apportion his estimate of the fair market value of the property (all interests in the property to be acquired) to each separately held interest. (However, tenant-owned improvements shall be valued in accordance with Paragraph 4(m) below.) The report shall contain the data, analyses, and reasoning by which the Appraiser made the apportionment. If the "unit rule" is regard as not applicable because the division of ownership is such as to diminish the fair market value of the property as a whole, the separate interests involved shall be appraised separately.
- (m) Tenant-owned improvements. If any building, structure, fixture, or other improvement to the property is identified as being the property of a tenant who has the right or obligation to remove it at the expiration of his term, the Appraiser's estimate of the fair market value of the improvement shall be the greatest of (1) the amount which the improvement contributes to the fair market value of the property, (2) the in-place value of the improvement as part of the real property (the depreciated replacement cost of the improvement installed), or (3) the fair market value of the improvement for removal from the property at the purchaser's expense. The appraisal report shall state the basis for the valuation of the improvement and furnish the data and analyses on which the valuation was made.
- (n) If the property is a multi-family or mixed-use (residential and non-residential) property. And an owner of a compensable interest in the property also occupies a dwelling in the property, the Appraiser shall furnish an apportionment of his estimate of the fair market value of the whole property to such dwelling and to the remainder of the property. For the purpose of this paragraph, an occupant of a dwelling shall be considered to own a compensable interest in the property if he holds fee title, a life estate, a 99-year lease, or a lease with not less than 50 years to run from the date of valuation, or holds an interest in a cooperative housing project which includes the right to occupy the dwelling, or is the contract purchaser of any of the foregoing estates or interests, or has a leasehold interest with option to purchase. The Appraiser's report shall explain how he made the apportionment.

## **Exhibit 6-2 – AGREEMENT FOR APPRAISAL SERVICES**

(Continued)

**ARTICLE 5. Services To Be Provided by Local Entity**

- (a) A map or plat. Based on official records, of the property described in Article 1, showing the boundaries and dimensions of the parcels to be appraised. A number shall designate each parcel, and the parcel numbers shown on the Appraiser's reports shall correspond to the parcel numbers shown on the map or plat. However, additional parcel numbers may be assigned by the Appraiser for easements appraised separately or for additional parcels revealed while making the appraisals. The Appraiser shall promptly advise the Local Entity of any such additions.
- (b) An ownership data report for each parcel. That report will show all estates and interests in the parcel as shown of record and consequently shall not be assumed to accurately define the interests to be appraised. The ownership data report on each parcel as shown on the parcel map will include:
- (1) The name (and address, if available) of the owner appearing on record.
  - (2) The legal description of the parcel as shown by the conveyance(s) by which the record owner acquired title.
  - (3) Identification of the conveyance(s) by which the present owner acquired title, including: the date of the conveyance(s); the date, book and page numbers, and place of recordation; the name (and the address, if available) of the grantor of such conveyance; the stated consideration; the amount of any mortgages or encumbrances placed of record or to which title was subject at time of conveyance (so far as determine from an examination of the conveyance); and the amount of any State or local transfer taxes that were based on the amount of the consideration.
  - (4) Outstanding estates and other rights or interest of record, including easements, use restrictions, mineral rights, leases, and any known, but unrecorded, interests of other parties. Sufficient information shall be furnished to disclose the probable effect of such outstanding interests on the title of the record owner.
  - (5) Outstanding special assessments, if any, for public improvements such as streets, sidewalks, public utilities, and similar public facilities.
  - (6) The amount of real estate taxes for the current year and the assessed valuation stated separately for land and for improvements.
- (c) Legal advice. Upon request of the Appraiser, on legal matters affecting the appraisal of any property to be appraised.

**ARTICLE 6. Payment**

In consideration of the services provided by the Appraiser under this agreement, the Local Entity agrees to make payments to the Appraiser upon the submission to the Local Entity of properly certified invoices, as follows:

- (a) For appraisal reports accepted by the Local Entity, and for all other services furnished in accordance with Article 3, except services furnished in connection with judicial proceedings under Paragraph 3(b), the updating of appraisals under Paragraph 3(c), and the valuation of reservations of rights in owners under Paragraph 3(d), the lump sum of ~~<#>~~ dollars, which shall constitute full payment to the Appraiser for all of such services and for all supplies, materials, and equipment used or furnished by the Appraiser and all expenses incurred by the Appraiser in connection with the performance of such services.

**Exhibit 6-2 – AGREEMENT FOR APPRAISAL SERVICES**

(Continued)

- (b) For services furnished by the Appraiser in connection with judicial proceedings as provided in Paragraph 3(b) (except services as an expert witness in such a proceeding), the updating of appraisals as provided in Paragraph 3(c), and the valuation of reservations of rights in owners as provided in Paragraph 3(d), <#> dollars per hour or fraction of an hour actually engaged in performing the services, including travel time. All expenses of the Appraiser, including travel expense and subsistence, shall be borne by the Appraiser.
- (c) For services as an expert witness for the Local Entity in judicial proceedings as provided in Paragraph 3(b), the Appraiser and the Local Entity hereby agree that the fair and reasonable compensation for the Appraiser's services shall be <#> dollars for each day's attendance in court.

### **ARTICLE 7. Agreements of Appraiser**

As an inducement to the execution of this agreement by the Local Entity and in consideration of the agreements to be performed by the Local Entity, the Appraiser agrees that:

- (a) Qualifications. The Appraiser is qualified to perform the services to be furnished under this agreement and is permitted by law to perform such services, and all personnel engaged in the work shall be qualified and so permitted to do the work they perform. Attached as Exhibit B, is a statement by the Appraiser, certified by him to be true and correct, setting forth his technical qualifications, general appraisal experience, specific experience in appraising properties of the type involved in this agreement, the courts in which he has testified as an expert witness, and other information pertinent to establishing his technical qualifications.
- (b) Solicitation of Agreement. The Appraiser has not employed any person to solicit this agreement and has not made, and will not make, any payment or any agreement for the payment of any commission, percentage, brokerage, contingent fee, or other compensation in connection with the procurement of this agreement.
- (c) Interest of Appraiser and Appraiser's Employees. The Appraiser does not have any interest (including that of real estate agent or broker), direct or indirect, present or prospective, in any property described in Article 1 or in its sale, or any other interest, whether or not in connection with the property, which would conflict in any manner or degree with the performance of the services and the submission of impartial reports, and has not employed and will not employ, in connection with the services to be furnished under this agreement, any person having any such interest. Until the property is acquired by the Local Entity or excluded from its project by resolution of its governing body, the Appraiser and any employees of the Appraiser, so long as they are employed by the Appraiser, will not acquire any such interests and will not, for their own account or for other than the Local Entity, negotiate for any of the property, perform services in connection with the property, or testify voluntarily as a witness in a condemnation or other proceeding with respect to the property.
- (d) Services To Be Confidential. All services, including reports, opinions, and information, to be furnished under this agreement are confidential and shall not be divulged, in whole or in part, to any person, other than to duly authorized representatives of the Local Entity, without prior written approval of the Local Entity, except by testimony under oath in a judicial proceeding or as otherwise required by law. The Appraiser shall take all necessary steps to ensure that no member of his staff or organization divulges any such information except as may be required by law.

### **Exhibit 6-2 – AGREEMENT FOR APPRAISAL SERVICES**

(Continued)

- (e) Facilities and Personnel. The Appraiser has and will continue to have proper facilities and personnel to perform the services and work agreed to be performed. If the Appraiser proposes to employ any person or persons to make any appraisals of machinery and equipment or other specialized elements or attributes of a property appraised under this agreement, the employment of such person or persons for such purpose shall not place the Local Entity under any obligation of such employee, nor relieve the Appraiser of full responsibility for the performance of the services to be furnished under this Agreement.
- (f) Equal Employment Opportunity. During the performance of this agreement:
  - (1) The Appraiser will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Appraiser will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Appraiser agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Local Entity setting forth the provisions of this non-discrimination clause.
  - (2) The Appraiser will state in all solicitations or advertisements for employees placed by or on behalf of the Appraiser, that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.
- (g) Assignment. The Appraiser's rights, obligations, and duties under this agreement shall not be assigned in whole or in part, but this shall not prohibit the assignment of the proceeds due under this agreement to a bank or financial institution. This agreement may be assigned by the Local Entity to any corporation, Local Entity, or instrumentality having authority to accept the assignment.
- (h) Subcontracting. None of the work or services covered by this agreement shall be subcontracted without the prior approval of the Local Entity.
- (i) Records. The Appraiser shall maintain records of all details with respect to the services to be performed under this agreement, including one complete copy of each appraisal report and related notes, for three (3) years after delivering the report or until the property is acquired by the Local Entity or the acquisition is abandoned, whichever is later.
- (j) Affidavits of Compliance. The Appraiser will, if requested by the Local Entity, furnish the Local Entity affidavits certifying compliance with the provisions of this Article 7.

## **ARTICLE 8. Changes**

The Local Entity, by written notice to the Appraiser, may modify the scope or quantity of the services to be furnished under this agreement. If such changes cause an increase or decrease in the amount of services to be provided by the Appraiser or in the time required for their performance, equitable adjustment shall be made in the provisions of this agreement for payments to the Appraiser or for the time for performance of the services or for both, and this agreement shall be modified by agreement of the parties accordingly.

### **Exhibit 6-2 – AGREEMENT FOR APPRAISAL SERVICES**

(Continued)

**ARTICLE 9. Termination of Agreement for Cause**

If, through any cause, the Appraiser fails to fulfill in a timely and proper manner his obligations under this agreement, or if the Appraiser shall violate any of the provisions of this agreement, the Local Entity may upon written notice to the Appraiser terminate the right of the Appraiser to proceed under this agreement or with such part or parts of the agreement as to which there has been default, and may hold the Appraiser liable for any damages caused to the Local Entity by reason of such default and termination. In the event of such termination, any completed reports prepared by the Appraiser under this agreement shall, at the option of the Local Entity, become its property and the Appraiser shall be entitled to receive equitable compensation for any work completed to the satisfaction of the Local Entity. The Appraiser, however, shall not thereby be relieved of liability to the Local Entity for damages sustained by the Local Entity by reason of any breach of the agreement by the Appraiser, and the Local Entity may withhold any payments from the Appraiser for the purpose of set off until such time as the amount of damages due the Local Entity from the Appraiser is determined. The Appraiser shall not be held liable for damages under this Article solely for reasons of delay if the delay is due to causes beyond his control and without his fault or negligence, but this shall not prevent the Local Entity from terminating this agreement because of such delay.

**ARTICLE 10. Interest of Members of Local Entity**

No member of the Local Entity shall participate in any decision relative to this agreement affecting, directly or indirectly, personal interests. No such member and no other officer, agent, or employee of the Local Entity having any responsibility or function in connection with this agreement shall have any private interest, direct or indirect, in this agreement or the proceeds of this agreement.

**ARTICLE 11. Officials Not To Benefit**

No Member of or Delegate to the Congress of the USA, and no Resident Commissioner, shall be admitted to any share or part of this agreement or to any benefit to arise from the same.

**ARTICLE 12. Notices**

Any action by the Local Entity under this agreement may be taken by *<name>*, *<name>* or such other person(s) as the Local Entity may, by written notice to the Appraiser, designate for such purpose. All notices to the Appraiser shall be considered to be properly given if mailed to the address specified below, or delivered personally to the Appraiser. All notices or other papers given to the Local Entity shall be considered to be sufficiently given if mailed, postage prepaid to *<name>*, at *<address>*, or to another representative or address as the Local Entity may designate to the Appraiser in writing.

IN WITNESS WHEREOF, the Local Entity and the Appraiser have executed this agreement on or as of the date first above written.

\_\_\_\_\_  
Appraiser

\_\_\_\_\_  
Address

\_\_\_\_\_  
City

\_\_\_\_\_  
State

\_\_\_\_\_  
Zip Code

\_\_\_\_\_  
Local Entity

\_\_\_\_\_  
By

\_\_\_\_\_  
Title

**Exhibit 6-2 – AGREEMENT FOR APPRAISAL SERVICES**  
(Continued)

## WAIVER OF PROCEDURES AND RIGHTS UNDER *THE UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES ACT OF 1970*

*(Used in the case of donation of property)*

I/We, as property owner(s), waive, or give up, my/our right to have the *<Local Entity name>*, State of Montana, follow completely the procedures required under the *Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Uniform Act)*. I/We further waive, or give up, the right to an appraisal and to any and all claims for compensation by the *<Local Entity name>* with respect to my/our donation of the *<property description>* described on Exhibit "A" attached to this agreement.

The *<Local Entity name>* has explained my/our rights and benefits as property owner(s) under the *Uniform Act*; has notified me/us that the *<Local Entity name>* waives its right of condemnation by eminent domain for acquisition of this property; and I/we have received a copy of the Montana Department of Transportation (MDT) pamphlet, "Questions and Answers On Buying Property for Montana Highways." I/We have read this pamphlet and understand it.

I/We have offered to donate the *<property description>* to the *<Local Entity name>* on *<date>*. I/We have discussed with a representative of the *<Local Entity name>* the compensation and other assistance required under the *Uniform Act*. I/We understand the I/we cannot be required to donate or sell the *<property description>* to the *<Local Entity name>* for less than the appraised Fair Market Value and without other assistance to which I/we may be entitled to under the *Uniform Act*.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Local CTEP Administrator Signature

\_\_\_\_\_  
Seller Signature

Subscribed and sworn to before me on *<date>*.

\_\_\_\_\_  
\*Notary Public Signature

My commission expires on *<date>*.

\*This could be any witness as this is not a recorded document. Notary will be required on recordation documents (e.g., deeds).

\_\_\_\_\_  
Title

### EXHIBIT 6-3 – WAIVER OF PROCEDURES AND RIGHTS

## VOLUNTARY ACQUISITION FILE CHECKLIST

Name of Property Owner: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Location of Acquired Property: \_\_\_\_\_

Property Use:      ☐ Single Family Residence   ☐ Business   ☐ Agriculture  
                          ☐ Multi-Family Residence   ☐ Nonprofit

Occupants?      ☐ No   ☐ YesTenants?      ☐ No   ☐ Yes

DATE	DOCUMENTATION IN FILE	AMOUNT
_____	MDT authorization to incur costs (Federal right-of-way agreement)	
_____	Appraisal	\$ _____
_____	Contract signed/Proof of payment	\$ _____
_____	Survey Conducted and Filed	
_____	Recording of property deed	
_____	Record of settlement costs	\$ _____
_____	Filing of complaint or appeal (if applicable)	
_____	Resolution of complaint or appeal (if applicable)	

As part of its project, the Local Entity has acquired the parcel of land described below. The local agency office selected this site after soliciting for a voluntary offer by landowners in the general project area. The property was acquired through a voluntary proposal submitted by the owner in response to a public invitation and the Local Entity has determined that the acquisition is exempt from procedures required under the *Uniform Act*.

The Local Entity acknowledges that any dislocation of tenants on the property must be conducted according to provisions related to relocation in the *Uniform Act*, and as noted in [Chapter 6](#) of the *MDT CTEP Manual*.

Checklist completed by:

\_\_\_\_\_  
Name\_\_\_\_\_  
Date\_\_\_\_\_  
Title

Federal-aid Project Name: \_\_\_\_\_  
 Federal-aid Project Number: \_\_\_\_\_

## UTILITIES CHECKLIST

*Preliminary Engineering (PE) – design engineering activity.*

Incidental Construction (IC) – actually utility or railroad relocation or construction.

1. Yes ☐ No ☐ Have utility companies/railroads been advised of possible involvement? All involvement of utility/railroad facilities must comply with the applicable *Code of Federal Regulations* (23 CFR 645, Subpart A), Montana Statutes and local regulations and ordinances.
2. Yes ☐ No ☐ Are all utilities/railroad facilities identified on the plans?
3. Yes ☐ No ☐ Have cost estimates to relocate underground or overhead utility/railroad facilities been obtained? Cost estimates must be based on the minimum amount of work necessary and the most economical re-route.
4. Yes ☐ No ☐ Has an agreement between the Local Entity/MDT and utility/railroad facility been reached? Have necessary easements been obtained when work is to be completed on railroad property? If yes, send a copy of the agreement to the CTEP Section.
5. Yes ☐ No ☐ If applicable, has a “Fast Process Agreement” been negotiated between the Local Entity and the Utility? The agreement must define the scope of work, cost participation, basis of payment (actual or lump sum), definition of work (either written or by exhibit), and the method to be used in the handling of unanticipated work.
6. Yes ☐ No ☐ Work may either be completed by the utility/railroad or let to contract. Has the relocation been inspected for compliance with agreements? If yes and all comply, have the utility submit a final bill for payment.
7. Yes ☐ No ☐ Has a procedure to randomly audit the utility company bills for compliance with the terms of the Agreement been established? If not, develop a procedure in order to proceed with project development.

\_\_\_\_\_  
 Preparer's Name

\_\_\_\_\_  
 Title

\_\_\_\_\_  
 Date

\_\_\_\_\_  
 Local Entity Name

\_\_\_\_\_  
 Local CTEP Administrator

\_\_\_\_\_  
 Date

### EXHIBIT 6-5 – UTILITY CHECKLIST



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## Chapter 7

# PRELIMINARY ENGINEERING

### 7.1 OVERVIEW

This chapter provides guidance on the Federal and State requirements that govern the preliminary engineering (design phase) of CTEP projects. These design activities occur prior to award of the construction contract. The related expenses are charged to the Preliminary Engineering (PE) (Design Engineering) account. [Exhibit 7-1](#) provides a sample of the Preconstruction Checklist, which summarizes several basic project development considerations. An electronic copy of this checklist can be found on the [CTEP website](#). If the Local Entity hires a consultant to prepare the design, these design activities must be detailed in the Consultant Services Agreement; see [Chapter 5](#).

Project development activities eligible for CTEP participation include surveys; project design (e.g., investigations, studies, tests, calculations, report preparation); environmental review; preparation of project plans, specifications, quantity estimating and cost estimates; and the advertisement and award of the construction contract.

## 7.2 REQUIREMENTS

The documents listed in this Section provide some of the basic design references for a typical CTEP project. Design criteria may vary based on the scope of the project. Local Entities should determine which criteria apply before beginning the design activities. Local Entities may elect to use higher standards than listed in the following documents. In addition to these requirements, the Local Entity must comply with the applicable requirements discussed in the other chapters of this *Manual*.

### 7.2.1 Federal Requirements

As applicable, the CTEP project should meet the design criteria provided by the following national organizations. The most common, but not all inclusive, policies and guidelines are listed below:

1. American Association of State Highway and Transportation Officials (AASHTO). AASHTO design criteria may be found in the following documents:
  - *A Policy on Geometric Design of Highways and Streets*;
  - *Guidelines for Geometric Design of Very Low-Volume Roads (ADT  $\leq$  400)*;
  - *A Guide for Achieving Flexibility in Highway Design*;
  - *Roadway Lighting Design Guide*;
  - *Guide for the Development of Bicycle Facilities*;
  - *Guide for the Planning, Design, and Operation of Pedestrian Facilities*;
  - *Roadside Design Guide*;
  - *Guide Specifications for Design of Pedestrian Bridges*; and
  - *A Guide for Transportation Landscape and Environmental Design*.
2. Transportation Research Board (TRB). CTEP project design criteria may be found in the following TRB documents:
  - *Highway Capacity Manual*; and
  - NCHRP Report 350, *Recommended Procedures for the Safety Performance Evaluation of Highway Features*.
3. Institute of Transportation Engineers (ITE). Design criteria that may apply to a CTEP project can be found in the following ITE documents:
  - *Traffic Engineering Handbook*;
  - *Design and Safety of Pedestrian Facilities*;
  - *Guidelines for Driveway Location and Design*; and
  - *Traffic Calming*.

4. Other Federal and National Criteria. Design criteria that may apply to a CTEP project can be found in the following documents:
  - *Manual of Uniform Traffic Control Devices (MUTCD)*, FHWA, AASHTO, ITE, and ATSSA;
  - *Federal-aid Policy Guide*, FHWA;
  - *ADA and ABA Accessibility Guidelines for Buildings and Facilities (ADA Guidelines)*, US Access Board; and
  - *Uniform Building Code*, International Conference of Building Officials (ICBO).

Note that most of the above documents can be obtained from the internet.
5. Code of Federal Regulations (CFR). CFR Title 23 discusses the applicable Federal Regulations that apply to highway projects.

### 7.2.2 State Requirements

The following are applicable State criteria that Local Entities should review during the development of their CTEP project:

1. Montana Department of Transportation (MDT). Local Entities should consider using the design criteria presented in the following MDT publications:
  - *Standard Specifications for Road and Bridge Construction*;
  - *Detail Drawings for Road and Bridge Construction*;
  - *Road Design Manual*;
  - *Traffic Engineering Manual*;
  - *Construction Administration Manual*;
  - *MDT Average Bid Prices*;
  - *MDT's Guide to Public Involvement*;
  - *Civil Rights Manual*; and
  - *DBE Program Guidelines*.
2. Montana Code Annotated (MCA). Applicable design criteria can be found in the following Sections of the *Montana Code Annotated*:
  - *MCA 7-5-2301, County Contracts*;
  - *MCA 7-5-4302, Municipal Contracts*;
  - *MCA 7-22-2101, Re-vegetation of Rights-of-Way and Disturbed Areas*;
  - *MCA 15-50-201, Tax on Contractors*;
  - *MCA 18-1-101, Preferences and General Matters*;
  - *MCA 18-2-122, Plans to Bear Seal*;

- *MCA 39-9-201, Contractor Registration; and*
- *MCA 61-8-201, Local Traffic Devices.*

### 7.2.3 **MDT Policies**

For CTEP projects, Local Entities are required to comply with the following MDT policies:

1. **Surfacing Policy.** All pathways constructed using CTEP funds are assumed to be accessible routes and must meet ADA criteria. Provide hard surfacing (e.g., asphalt, concrete, double-shot asphalt treatment) for all newly constructed pathways. Exceptions may be considered on a case-by-case basis for a path in a rural area if the Local Entity can demonstrate that the surfacing will be firm, stable and slip resistant.

CTEP funds may be used to enhance an existing unpaved trail to a pathway. The distinction between recreational trails and transportation facilities is important. CTEP funds cannot be used for constructing recreational trails.

2. **Signing Policy.** Ensure that any signing and pavement markings placed on or adjacent to shared use paths or bicycle paths meet the design criteria in the *MUTCD* and/or the *AASHTO Guide for the Development of Bicycle Facilities*. Keep the signing and pavements markings simple and check to ensure they serve a purpose. Include the signing and pavement marking plan sheets with the design plans submitted to MDT for approval.
3. **Welcome to Community Monuments.** MDT policy is that CTEP funds may be used for the design and construction of “Welcome to Community Monuments.” These community monuments typically range from an engraved rock or stone to a landscaped formation depicting the community name or symbol. Community monuments should not resemble a standard sign-like structure.

If CTEP funds are used for these monuments, the Local Entity must following the CTEP project procedures outlined in [Chapter 2](#). The CTEP Project Application should include a detailed design depicting the dimensions, materials, color and any other pertinent information. If these monuments are placed within the State right-of-way, the Local Entity will need to:

- consider location of the monument,
- obtain MDT’s approval of the location and design,
- maintain the monument, and
- obtain an Encroachment Permit from the MDT District Administrator.

For additional information on community monuments or for a copy of the official policy, contact the CTEP Section and/or see the *MDT Right-of-Way Operations Manual*.

### **7.3 DESIGN DOCUMENTATION**

The Local Entity is required by FHWA and MDT to retain all relevant design documentation (e.g., surveys, design reports, design files, plan sheets, special provisions, computations, assumptions, tests, investigations) and other relevant information for three years after the project has been closed. If consultant services are used, copies of all project-related correspondence, agreements, etc., must also be retained for three years.

#### **7.3.1 Project Reports**

For most projects, the Local Entity will not have to provide engineering reports. The CTEP Project Application will provide adequate information regarding the scope of work, location, cost and project schedule. The plans, specifications and cost estimates (PS&E) submitted to MDT for review will confirm that the project is proceeding per the project application. The MDT CTEP Project Manager will make periodic checks on the status of the project through phone calls or email exchanges.

The Local Entity should notify the MDT CTEP Project Manager in writing if there is a significant change in the project scope of work, location, cost or schedule. The MDT CTEP Project Manager will advise the Local Entity if additional written documentation is required.

When projects include structures, embankments, bridges or other features requiring special engineering studies (e.g., geotechnical, structural, hydraulic), the Local Entity will be required to submit these reports to the MDT CTEP Project Manager for review by MDT. The need for these special studies will be determined on a project-by-project basis.

#### **7.3.2 Design Exceptions**

Under some circumstances, it may not be cost effective or it may be impractical to meet the criteria presented in the documents listed in [Section 7.2](#). In these instances, the Local Entity should request a design exception from MDT. For projects located on the State highway system, any exceptions to the MDT design criteria, design practices and material standards must be approved by the appropriate MDT Bureau Chief. This applies to each element, by location, that does not conform to desirable standards. For projects located off the State highway system, the Local Entity will request a design exception from the CTEP Section. The proposed design exception must have written approval by the Local Entity prior to submission for MDT consideration. Submit exception requests and appropriate documentation on why the exception is required to the CTEP Section.

#### **7.3.3 ADA Considerations**

CTEP projects must comply with the *Americans with Disabilities Act* (ADA). ADA is a Federal law administered by the US Department of Justice, and all public works projects must comply

with the provisions of the law. For CTEP projects, this means pedestrian facilities (e.g., sidewalks) and multi-use paths (e.g., pedestrian and bicycle paths), as well as visitor centers, museums and buildings accessible to the general public, must have slopes, ramps, detectable warning devices (e.g., truncated domes) and other features to accommodate the disabled.

There may be situations where compliance with ADA requirements is “technically infeasible.” “Technically infeasible” means that compliance with ADA has little likelihood of being accomplished. Existing physical or site restraints may prohibit modification or addition of features that are in full and strict compliance with the minimum requirements necessary to provide accessibility. For example, sidewalks or multi-use paths constructed on steep terrain may have slopes that exceed ADA requirements. Every effort must be made to either achieve compliance, or to provide features (e.g., turn-outs or resting areas) to accommodate the disabled. Cost of complying with ADA is not a consideration when determining technical infeasibility.

In cases where CTEP projects encounter technically infeasible ADA compliance issues, the Local Entity must consult with the CTEP Section and the MDT ADA Compliance Specialist to determine the best course of action. The Local Entity will also be responsible for documenting the problem encountered, and the justification for constructing non-complying features in the case of technical infeasibility.

### **7.3.4     Plans, Specifications and Estimating Requirements**

The PS&E consists of the Project Manual, bid proposal, bidding documents, contract documents, construction proposal, bid specifications, bid package, contract documents and contract plans. Throughout this *Manual*, the term Project Manual refers to the combined bid package of project plans, specifications and other contract documents distributed to bidders.

A sample Project Manual Checklist (Proposal and PS&E) is provided in [Exhibit 7-2](#), which summarizes the basic PS&E considerations. An electronic copy of this checklist is available on the [CTEP website](#).

#### **7.3.4.1     Drawings (Plans)**

Project drawings are the graphic and pictorial portions of the contract documents that illustrate the design, location and dimensions of the work. Sample plan sheets for typical CTEP projects are located on the MDT website. Also, see the *MDT Road Design Manual*, *MDT Traffic Engineering Manual*, *MDT Structures Manual* and *MDT Right-of-Way Design Manual* for guidance on plan preparation.

If available, the CTEP Section will review conceptual drawings. The Local Entity must submit the final drawings to the CTEP Section for review. Final drawings must provide sufficient information for reviewers to be reasonably assured that the applicable design specifications were adhered to during drawing development.

Detailed drawings are typical design details showing materials, dimensions, arrangement, configuration and other information necessary for construction. These detailed drawings may be incorporated into the project drawings or included by reference.

#### **7.3.4.2 Standard Specifications and Special Provisions**

Specifications and special provisions are used to describe to the Contractor the work to be completed. Most CTEP projects should reference the applicable standards, specifications and/or forms described in the *MDT Standard Specifications for Road and Bridge Construction* and/or the *Montana Public Works Standard Specifications*. Specifications, including supplements, used from these documents should not be included in the Project Manual.

If a design element is not adequately described in one of the above documents, the designer must prepare a special provision describing the necessary instructions to the Contractor. All special provisions should be included in the Project Manual. However, nationally recognized specifications (e.g., ASTM) may be incorporated by reference. Ensure that the referenced specifications can be reviewed by others (i.e., list the appropriate website or document where the reference documents can be found).

Consider the following when preparing specifications:

1. Temporary Traffic Control. Temporary traffic control must be in accordance with the *MUTCD*, *MDT Standard Specifications* and *MDT Detailed Drawings*. Include a special provision outlining the necessary traffic control requirements and pay items.
2. Proprietary Trade Names. The use of proprietary trade names is prohibited by FHWA. Prepare specifications to ensure competition among equivalent materials, equipment and methods.
3. Architectural Projects. For an architectural project, the designer may use the American Institute of Architects (AIA) documents to develop the necessary special provisions.
4. CTEP Contract Special Provisions. MDT CTEP contract special provisions are required on all CTEP projects. These special provisions can be found on the [CTEP website](#).
5. EEO Affirmative Action Requirements. Add these special provisions to meet Federal affirmative action requirements. These special provisions can be found on the [CTEP website](#).

For further guidance on developing special provisions, see the *MDT Road Design Manual*.

#### **7.3.4.3 Quantity Estimating**

Individual construction items may be shown within the contract plans. The designer is responsible for providing a summary of all items and an estimate of the quantity required to

complete the project. The summary of quantities is used to prepare the Local Entity's final cost estimate, the bid proposal by the contractor and for managing the construction. Include the summary of quantities sheet in the Project Manual. For guidance on estimating quantities, see the *MDT Road Design Manual*.

#### **7.3.4.4 Cost Estimating**

Using the estimate of quantities, develop a detailed cost and submit it separately to MDT. This cost estimate is used to request the appropriate CTEP construction funding from FHWA by the CTEP Section. Construction costs are determined using the unit price for each proposed work item. Unit prices can be determined from similar projects or can be obtained from the CTEP Section. If two or more funding sources are used to fund the project, segregate the costs for each item that will be funded with the various funding sources (funding splits). Provide the total project cost on the first page of the cost estimate. A sample Construction Cost Estimate Report Summary is provided in [Exhibit 7-3](#). See the *MDT Road Design Manual* for additional guidance on preparing cost estimates.

#### **7.3.5 Project Manual Preparation**

Submit two copies of the Project Manual to the CTEP Section for review. It is preferred that the Contract Plan Sheets submitted are in half-size. Project Manuals must be bound and will generally contain the following:

1. Mandatory Items. The following items must be included in the Project Manual:
  - Invitation to Bid;
  - Instructions to Bidders;
  - DBE Requirements;\*
  - Acknowledgement of Receipt of Addenda;
  - Schedule of Items;
  - CTEP Proposal Form;\*
  - Bid Bond Form;
  - Agreement Form;
  - Wage Rates;
  - FHWA 1273 Form;\*
  - EEO Affirmative Action Requirements;\* and
  - CTEP Special Provisions.\*

\* Items are available for download from the [CTEP website](#).

2. Other Items. The Project Manual should include the following:

- Cover Sheet, see [Exhibit 7-4](#) for a sample Project Manual cover sheet;
- Table of Contents;
- Payment and Performance Bond Forms;
- Standard General Conditions;
- Supplementary Conditions;
- Miscellaneous Forms (e.g., Notice to Award, Notice to Proceed, Change Order, Work Change Directive, Application for Payment, Certification of Substantial Completion);
- Technical Special Provisions; and
- Contract Plan Sheets.

## 7.4 CONTRACT LETTING

### 7.4.1 Bid Process

Before inviting bids on a contract, the Local Entity should ensure that the Project Manual contains all of the relevant information that bidders will require and that written authorization to proceed has been received from MDT. The environmental document must be fully executed and all right-of-way property, easements or rights-of-way required for construction must be acquired before MDT will authorize a bid letting.

The construction budget should be sufficient to cover a reasonable award contingency. For projects where the award decision will be based on the available funds, notify MDT of this amount prior to opening bids. MDT will not concur in the award of any contract that exceeds this established amount.

When MDT authorizes the Local Entity to solicit bids, the Local Entity will be instructed to contact the appropriate MDT District Administrator, who will assign an MDT District Liaison to assist with the construction phase. The MDT District Liaison must be invited to the pre-construction conference.

Once MDT has given approval to begin the bid process and if there are any addendums to the plans or specifications, these changes or additions must also be approved by MDT. Approved addendums must be mailed to each plan holder and every prospective bidder must be given adequate time to review and respond. Local Entities need to maintain a plan holders list to accommodate any addendums.

A Contract Letting Checklist is provided in [Exhibit 7-5](#), which summarizes the contract letting process. An electronic copy of this checklist can be found on the [CTEP website](#).

#### 7.4.1.1 Advertisement

Competitive sealed bidding is used for construction and procurement activities in the Federal-aid program. In addition to advertising, MDT strongly encourages the distribution of the solicitation to builders' exchanges and plan houses.

MDT requires Local Entities to follow prudent purchasing practices. Because of the public visibility of most transportation projects, maintaining a high-level of public confidence regarding the expenditure of all public funds is vital.

A solicitation for the work should be drafted based on the information included in the Advertisement for Bid portion of the Project Manual. For construction, repair, maintenance or for purchases of materials or supplies in excess of \$50,000 (*MCA 7-5-4302*), Local Entities must advertise the project for competitive bids. The notice must be published twice, with at least six days separating each publication (*MCA 7-1-2121* and *7-1-4127*). FHWA requires the solicitation period last a minimum of three weeks (*23 CFR 635.112*). See *MCA 7-5-4302* and *7-5-2301* for

additional State requirements for cities and counties, respectively. Local Entities should also familiarize themselves with advertising requirements pertaining to the Internet.

A limited solicitation process may be used if the construction or procurement costs are estimated to be less than \$50,000. The proposal package generally includes all of the required forms as noted in the [Section 7.3.5](#). However, not all of those forms will be required for a limited solicitation project. Entities are encouraged to make an effort to obtain at least three bids. Contact the CTEP Section for additional details on the limited solicitation requirements.

#### **7.4.1.2 Wage Rates**

The *Davis-Bacon Act* requires contractors to pay prevailing wage rates for any public works contracts greater than \$2,000 if any part of the project comes in contact with State or Federally-maintained right-of-way. If a project estimated to cost more than \$25,000 is located on a roadway classified as a local road or rural minor collector, the State prevailing wage rates will apply. Projects less than \$25,000 on local roads or rural minor collectors require the contractor to meet the current minimum wage rate.

Local Entities must verify that the proposed wage rate determination is current. Therefore, the Local Entity should verify the wage rates in the Project Manual no less than 10 calendar days prior to bid opening. If the wage rates have changed, an addendum must be issued. Changes to the wage rates less than 10 days before the bid opening are not applicable.

State wage rates can be found on the Montana Department of Labor and Industry's web site. This site also provides a link to the Federal Davis-Bacon Wage Rates. Contact the CTEP Section for assistance in determining the correct wage rate.

#### **7.4.1.3 Procurement of Contracted/Vendor Services**

Contracted/vendor services are typically labor intensive (e.g., landscape design, biological assessments, wetland delineation, historical/cultural surveys, property appraisals) and encompass the physical act of completing a task. For solicitation of contracted services, a Local Entity may use the Request for Proposals (RFP) method of procurement at any time or the following procedures (2.5.603 *Administrative Rules of Montana*):

1. Under \$5,000. Local Entities can enter into direct negotiation with the service provider of choice. Requesting quotes from multiple providers is encouraged as this may result in a lower price.
2. Between \$5,000 and \$50,000. The Local Entity may use a limited solicitation. A limited solicitation requires a minimum of three written or oral quotations. Document the reason why a limited solicitation was used and include all quotes from the providers contacted in the project files. Select the service provider based on the lowest cost for the proposed work.

3. Over \$50,000. Local Entities must prepare a RFP and solicit service providers through public advertisements. Use the selection and contract review procedures discussed in [Chapter 5](#).

#### **7.4.1.4 Plan Holders List**

A list of all persons or firms requesting and receiving a set of the Project Manual (bidding documents) must be maintained. This information will be needed in the event that an addendum needs to be issued. Include the CTEP Section on the plan holder's list.

#### **7.4.1.5 Alternative Bid Options**

Local Entities should try to keep construction costs within the limits of their available funding. When bids received for project construction exceed the available funding, the bids must be rejected and the project scaled back. Local Entities may not pick and choose from the contractor's bid submission in order to keep the project costs within the construction budget. If the Local Entity desires to have the maximum amount of work accomplished with the available funding, it should consider including alternative bid proposals in the bid solicitation. The first alternative calls for the minimum amount of work that the Local Entity wishes to accomplish within the available funding. Successive alternatives add increments of work to the previous alternative, up to the maximum amount of work proposed for the project. The Local Entity can then select the lowest responsive bid that meets the funding restraints. [Exhibit 7-6](#) provides a sample proposal that illustrates the use of three progressively larger bid alternatives.

#### **7.4.2 Bid Opening**

Upon receipt, each bid should be logged with the time and date of receipt. The bids should remain sealed and safely stored until the bid opening. The bid opening should be conducted in a business-like manner with each bid being opened and reviewed prior to reading aloud the dollar amounts. The Local Entity's attorney should participate in the bid opening. If any irregularities are found, the amounts should not be read or considered and the bid should be returned to the bidder. Local Entities should indicate why the bid was not read. Should a bidder identify an error in the bids, in any form, the Local Entity's attorney should review the State Statutes and Project Manual governing bid irregularities before proceeding. When all matters of bid irregularities are resolved, the lowest responsible bidder will be determined.

A bid proposal is irregular and will be rejected as non-responsive if:

- the bidder fails to properly sign the bid proposal;
- there are unauthorized additions, conditional or alternative bids or irregularities that make the bid package incomplete, indefinite or ambiguous;

- the proposals for two or more projects advertised separately are connected or made contingent one upon the other so that the proposal for one project carries a provisional deduction in the bid price on one or more of the other projects;
- any unauthorized provisions are added reserving the right to accept or reject an award or to enter into a contract pursuant to an award;
- more than one proposal for the same work from an individual, firm, corporation, partnership or joint venture under the same or different name is submitted; and/or
- evidence of collusion among bidders exists. Participants in collusion will not receive recognition as bidders, either singly or as a joint venture, for future work until re-instated as qualified bidders.

A bid proposal is considered irregular and may be rejected as non-responsive if:

- the bid proposal is altered;
- the bidder fails to include a name and mailing address;
- the unit prices contained in the proposal are obviously unbalanced, either in excess of or below the reasonable cost analysis value;
- the information entered in the proposal by the bidder is not legible;
- there are changes in the proposal (e.g., erasures, strikeouts, white-outs) that are not initialed in ink; and/or
- the proposal is non-compliant with the Disadvantaged Business Enterprise (DBE) requirements.

Public construction contracts must be awarded fairly and in a manner that ensures public funds are used as efficiently as possible. These objectives may be accomplished only if all bidders are required to respond to the same project specifications. Consequently, under no circumstances can Local Entities negotiate with the low bidder to bring the offer in line with the estimated project budget; see [Section 7.4.1.5](#).

### **7.4.3 Bid Review**

Following the bid opening, the Local Entity must review the low bid to ensure that the bid submission was technically and legally responsive to the solicitation for bids. If in the opinion of the Local Entity's consultant and/or attorney, the low bid proves to be unsatisfactory for any reason, the Local Entity may elect to use the next lowest bidder. A statement of justification must be sent to CTEP Section for concurrence in the decision to use the next lowest bidder.

#### **7.4.4 Contract Award**

Prior to awarding any construction contract, the Local Entity must request award concurrence from MDT. The award concurrence request must include the following from all bidders:

- a table of all bids received,
- the name of the Contractor and the principal owners,
- a copy of the proposal form,
- a schedule of items (bid form), and
- the DBE forms.

A Bid Review Certification Form must be submitted with all requests. A copy of this form is available on the [CTEP website](#). CTEP funds may be withheld from the Local Entity if a contract is entered into without MDT's award concurrence.

The Local Entity should make the contract award within 30 days of the bid opening unless there are special circumstances. Generally, the bid is valid beyond 60 days only with the prior written agreement of the low bidder. If a delay of longer than 60 days is anticipated, the Local Entity should contact MDT for guidance regarding the applicable wage rates. The preparation and distribution of the Notice of Award to the selected bidder begins the Construction Engineering (CE) phase of the project which includes construction engineering, management and inspection activities. If CE services are procured to assist the Local Entity, the consultant's first task will usually be to issue the award notice.

#### **7.4.5 Records Maintenance**

The Local Entity is responsible for maintaining design and construction files and should include the following:

- design details,
- cost estimates,
- minutes of design review meetings,
- MDT and consultant correspondence,
- project manual and plans,
- evidence of bid advertising,
- minutes of bid opening,
- tabulation of bids,
- evidence of low bid review, and
- MDT award concurrence letter.

## PRECONSTRUCTION CHECKLIST

1. Yes ☐ No ☐ Is new right-of-way required or is there a need to alter access to the highway? A public informational meeting is necessary if new right-of-way is required. For information on the requirements for holding a public information meeting, contact the CTEP Section. Attach minutes of the public information meeting or meetings that were held, any related documentation and complete the Right-of-Way Checklist in [Chapter 6](#).
2. Yes ☐ No ☐ Does the project affect design criteria for Federal-aid highways? Above ground facilities within the roadside clear zone must be constructed with breakaway devices or protected with barricades or other facilities and must consider sight obstructions. See the *MDT Road Design Manual*, *AASHTO Roadside Design Guide* and *AASHTO A Policy of Geometric Design of Highways and Streets*.
3. Yes ☐ No ☐ Does the project affect highway operations? Any project that will affect highway operations (e.g., disrupt the flow of traffic), must have concurrence from the local MDT District Administrator.
4. Yes ☐ No ☐ Is this a landscaping only project? Section 130 of the *Surface Transportation and Uniform Relocation Assistance Act of 1987* which amends Section 319 of Title 23, USC states that ¼ of 1% of funds allocated for landscaping projects require the planting of native wildflower seeds or seedlings, or both.
5. Yes ☐ No ☐ Does the project involve bridge rehabilitation and does the subject bridge cross over a waterway? Projects that involve bridge rehabilitation and cross a waterway require a scour evaluation. Review FHWA's *HEC 18*.
6. Yes ☐ No ☐ Does the project involve a bicycle/pedestrian facility? Projects that involve bicycle/pedestrian trails must be designed according to applicable design criteria. See the *AASHTO Guide for the Development of Bicycle Facilities*.
7. Yes ☐ No ☐ Does the project involve storm water runoff/water quality enhancement? Projects that involve storm water runoff water quality may require a permit and verification that no detrimental public hazards are created. They may also require erosion control plans. Contact the Environmental Services Bureau to determine what is required for the project.
8. Yes ☐ No ☐ Have the construction plans, specifications and cost estimates (PS&E) been prepared by a professional engineer registered in the State of Montana? All plans must bear the seal of an architect or a professional engineer registered in Montana when required by MCA 18-2-113 and 18-2-122 and be submitted to the CTEP Section for review.
9. Yes ☐ No ☐ Will consultant services be used to prepare plans and specifications (design), bid package, environmental review record, select contractors (advertise and award assistance) and/or perform construction engineering duties (e.g., inspections, testing, quantity measurement, construction staking) and other contract administration duties (e.g., EEO, Labor compliance, Civil Rights)? If so, and the costs are to be reimbursed with CTEP funds or counted toward the local match, consultant selection procedures discussed in [Chapter 5](#) must be used.

### Exhibit 7-1 – PRECONSTRUCTION CHECKLIST

## PROJECT MANUAL CHECKLIST (PROPOSAL AND PS&E)

The proposal package must include the following:

1. Yes ☐ No ☐ Plans (Include temporary traffic control plans, when applicable.)
2. Yes ☐ No ☐ Specifications (Use MPWSS or other approved specifications.)
3. Yes ☐ No ☐ Instructions to bidders.
4. Yes ☐ No ☐ Disadvantaged Business Enterprises and Schedule of Participation by DBE (MDT will determine the establish Disadvantaged Business Enterprises percentage goal for this project). Use standard DBE forms located on the MDT website.
5. Yes ☐ No ☐ Quantity Sheets. (Show quantities, the unit price and total price columns on the Sheet.)
6. Yes ☐ No ☐ Proposal (Bid Form). Use standard form located on the MDT website.
7. Yes ☐ No ☐ Acknowledgment of Receipt of Addendum.
8. Yes ☐ No ☐ Special Provisions (administrative and technical).
9. Yes ☐ No ☐ Prevailing Wage Rate/Minimum Wage Limitation.

Reference labor compliance: Federal Davis Bacon Wage Rates must be included in the contract. Rates are subject to change weekly; therefore, obtain a copy of the most current rate from the Montana Department of Labor and Industry immediately prior to advertising the project.

10. Yes ☐ No ☐ Special provision EEO Affirmative Action requirements. Use standard form located on the MDT website.
11. Yes ☐ No ☐ Required Contract Provisions Federal-Aid Construction Contracts.

After completing the preceding checklist, submit plans, specifications and cost estimates to the CTEP Section for review and comment. Upon completion of the final Project Manual (and drawings), submit the stamped, signed, and dated Manual and detailed estimate of construction costs to the CTEP Section for approval and authorization to proceed with Contract Letting (Advertisement and Award).

Note: Allow MDT 30 calendar days for each review.

**DO NOT PROCEED TO BID LETTING WITHOUT WRITTEN CONCURRENCE FROM MDT.**

\_\_\_\_\_  
Preparer's Name Title Date

\_\_\_\_\_  
Local CTEP Program Administrator Title Date

### Exhibit 7-2 – PROJECT MANUAL CHECK LIST (Proposal and PS&E)

## CONSTRUCTION COST ESTIMATE REPORT SUMMARY

Group No. 1 and 2: Summary of all contracted work.

Description: Shoulder widening, both sides, in excess of AASHTO desirable.

Item Number	Description	Unit	Unit Price	Quantity Estimate	Amount
1	Mobilization	Lump Sum		Lump Sum	\$20,000
2	Clearing and Grubbing	Lump Sum		Lump Sum	\$980
3	Excavation, Including Haul	CY	\$2.00	780	\$1,560
4	Embankment	CY	\$1.00	413	\$413
5	Adjust Manhole	Each	\$300.00	12	\$3,600
6	Adjust Catch Basin	Each	\$100.00	24	\$2,400
7	Gravel Base	CY	\$3.00	28,870	\$86,610
8	Crushed Surfacing Top Course	CY	\$5.00	6,500	\$32,500
9	Prime Coat	Ton	\$200.00	10	\$2,000
10	Cement Driveway – 6"	SY	\$16.00	289	\$4,624
11	ACP, Class C	Ton	\$15.00	10,283	\$154,245
12	Topsoil	CY	\$6.00	410	\$2,460
13	Concrete Curb and Gutter	LF	\$3.50	13,073	\$45,755
14	Pavement Marking	LF	\$1.30	3,646	\$4,740
15	Traffic Control	Each	\$1.00	7,200	\$7,200
16	Reconstruct Wooden Fence	LF	\$2.50	1,920	\$4,280
TOTAL					\$373,367
Award Contingency (10% as total contract is estimated to be > \$2,000)					\$37,337
<b>Construction Budget Recommendation, Group 1 and 2</b>					<b>\$410,704</b>
Federal/Local Participation ratio 86.58/13.42: Federal share					\$106,287
Federal/Local Participation ratio 86.58/13.42: Local share					\$16,474

Note: AASHTO calls for 12' lanes- 2' shoulders, this project will install 12' lanes with 8' shoulders on both sides for pedestrians and bicyclists, CTEP funds will pay a proportionate share of various common items.

### Exhibit 7-3 – SAMPLE CONSTRUCTION COST ESTIMATE REPORT SUMMARY

**PROJECT MANUAL  
BIDDING REQUIREMENTS, CONTRACT FORMS,  
AND  
CONDITIONS OF THE CONTRACT**

**Prepared For:** *<Local Entity name>*

**Federal-aid Project Name:** \_\_\_\_\_

**Federal-aid Project Number:** \_\_\_\_\_

**Uniform Project Number:** \_\_\_\_\_

**Prepared By:**

**Firm Name:** \_\_\_\_\_

**Firm Address:** \_\_\_\_\_

**City, State, Zip Code:** \_\_\_\_\_

**Seal:**

**Signature:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**Set Number:** \_\_\_\_\_

**Exhibit 7-4 – PROJECT MANUAL COVERSHEET**

**CONTRACT LETTING CHECKLIST****A. Advertise Project for Bids:**

1. Yes ☐ No ☐ Minimum of three weeks before letting (23 CFR 635A Section 635.112).
2. Yes ☐ No ☐ Legal advertisement in local and wide circulation newspapers:
  - a. Yes ☐ No ☐ Plan rooms, contractor associations and other interested bidders.
  - b. Yes ☐ No ☐ Open and read publicly at time and place specified in Instructions to Bidders. Bids must be submitted in sealed envelopes.

**B. Review and Evaluate Bids for Responsiveness:**

1. Yes ☐ No ☐ Signed proposal.
2. Yes ☐ No ☐ Bid bond for correct amount and issued by a surety corporation authorized to do business in the State of Montana.
3. Yes ☐ No ☐ DBE participation verified. Prior to contract award, the Local Entity must verify work and dollar amount with the proposed MDT certified DBE. Contract will not be awarded without documented verification.
4. Yes ☐ No ☐ Send copies of the bidder's list and proposal form from each bidder to the CTEP Section. This information is necessary for DBE compliance.
5. Yes ☐ No ☐ Addenda acknowledged.
6. Yes ☐ No ☐ Errors in extensions or totals resolved.
7. Yes ☐ No ☐ Obtain MDT Concurrence in Award. Submit copies of bids along with recommendations for award and the completed Local Entity Bid Review Form.

**DO NOT PROCEED WITHOUT WRITTEN CONCURRENCE IN AWARD FROM MDT**\_\_\_\_\_  
Preparer's Name\_\_\_\_\_  
Title\_\_\_\_\_  
Date\_\_\_\_\_  
Local CTEP Program Administrator\_\_\_\_\_  
Title\_\_\_\_\_  
Date**Exhibit 7-5 – CONTRACT LETTING CHECKLIST**

This Bid Schedule is comprised of three separate, but related schedules of work as follows:

Schedule A: Road reconstruction, retaining walls – parking areas and underground electrical on 2.750 mi.

Schedule B: Road reconstruction, retaining walls, parking areas and underground electrical on 3.270 mi (Includes Schedule A).

Schedule C: Road reconstruction, retaining walls, parking areas and underground electrical on 4.123 mi (Includes Schedules A and B).

To be eligible for award of contract, the offeror shall submit prices for each item in each of the three schedules.

The purpose of the three separate schedules is to give the government maximum flexibility in obtaining the greatest possible amount of work within the limits of the funds available at the time of award. Award of contract will be made on one schedule only.

The Government has determined that the maximum construction possible within the limit of funds available will be obtained by selection of one of the following schedules, listed below in descending order of importance to the government.

1. Award of Contract for Schedule C
2. Award of Contract for Schedule B
3. Award of Contract for Schedule A

Accordingly, award of contract, if made, will be made on a total bid basis to the lowest, responsive, responsible bidder bidding on Schedule C, if funds are available.

If funds are not available for the foregoing Schedule C, award of contract, if made, will be made on a total bid basis to the lowest responsive, responsible bidder bidding on Schedule B, if funds are available.

If funds are not available for the foregoing Schedule B, award of contract, if made, will be made on a total bid basis to the lowest responsive, responsible bidder bidding on Schedule A, if funds are available.

The possibility of there being different low bidders on the different schedules is recognized, and prospective bidders are hereby notified that there will be no basis for protest by any bidder whose bid would have been lowest under a different schedule than the one selected for award.

*Contact the MDT CTEP Project Manager for further guidance.*

#### **Exhibit 7-6 – ALTERNATIVE BID PROPOSAL**

## SCHEDULE OF ITEMS “A”

Federal-Aid Project Number: PRA SEQU 10(2)

Bidders Please Note: Before preparing the bid, carefully read the solicitation provisions.

The bidder shall specify a unit price (in figures) for each pay item for which a quantity is given. The bidder shall also show the products of the respective unit process and quantities (written in figures) in the column provided and the total amount of the bid. If there is a discrepancy between the unit price and the bid item total, the corrected unit price extension will govern. All figures shall be ink or typed. A unit bid price is not to be entered nor tendered for any pay item for which no estimated quantity appears in the bid schedule.

Item Number	Item	Unit of Measure	Quantity	Unit Bid Price	Amount Bid
15101	Mobilization	Lump Sum	All		
15202	Slope, Reference, and Clearing and Grubbing Stakes	Mile	1.462		
15203	Centerline Re-establishment	Mile	2.807		
15204	Drainage Structure Survey and Staking	Each	27		
15205	Bridge Survey and Staking	Lump Sum	All		
15206A	Retaining Wall Survey and Staking	Hour	80		
15207	Grade Finishing Stakes	Mile	2.924		
15209	Miscellaneous Survey and Staking	Hour	80		
15213	Parking Area Survey and Staking	Each	13		
15214	Paved Waterway Survey and Staking	Mile	0.362		
15301	Contractor Quality Control	Lump Sum	All		
15501	Construction Schedule	Lump Sum	All		
63635	Electrical Work	Lump Sum	All		
TOTAL BID SCHEDULE “A”		\$			

Written Bid for Schedule “A”:

\_\_\_\_\_

\_\_\_\_\_  
Signature of Bidder

\_\_\_\_\_  
Date

### Exhibit 7-6 – ALTERNATIVE BID PROPOSAL (Continued)

**SCHEDULE OF ITEMS “B”**

<b>Item Number</b>	<b>Item</b>	<b>Unit of Measure</b>	<b>Quantity</b>	<b>Unit Bid Price</b>	<b>Amount Bid</b>
15101	Mobilization	Lump Sum	All		
15202	Slope, Reference, and Clearing and Grubbing Stakes	Mile	1.983		
15203	Centerline Re-establishment	Mile	2.807		
15204	Drainage Structure Survey and Staking	Each	34		
15205	Bridge Survey and Staking	Lump Sum	All		
15206A	Retaining Wall Survey and Staking	Hour	80		
15207	Grade Finishing Stakes	Mile	3.966		
15209	Miscellaneous Survey and Staking	Hour	80		
15213	Parking Area Survey and Staking	Each	16		
15214	Paved Waterway Survey and Staking	Mile	0.5		
15301	Contractor Quality Control	Lump Sum	All		
15501	Construction Schedule	Lump Sum	All		
63635	Electrical Work	Lump Sum	All		
<b>TOTAL BID SCHEDULE “B”</b>		<b>\$</b>			

Written Bid for Schedule “B”:

---



---

Signature of Bidder

---

Date

**Exhibit 7-6 – ALTERNATIVE BID PROPOSAL**  
(Continued)

**SCHEDULE OF ITEMS “C”**

<b>Item Number</b>	<b>Item</b>	<b>Unit of Measure</b>	<b>Quantity</b>	<b>Unit Bid Price</b>	<b>Amount Bid</b>
15101	Mobilization	Lump Sum	All		
15202	Slope, Reference, and Clearing and Grubbing Stakes	Mile	1.983		
15203	Centerline Re-establishment	Mile	2.807		
15204	Drainage Structure Survey and Staking	Each	34		
15205	Bridge Survey and Staking	Lump Sum	All		
15206A	Retaining Wall Survey and Staking	Hour	80		
15207	Grade Finishing Stakes	Mile	3.966		
15209	Miscellaneous Survey and Staking	Hour	80		
15213	Parking Area Survey and Staking	Each	16		
15214	Paved Waterway Survey and Staking	Mile	0.5		
15301	Contractor Quality Control	Lump Sum	All		
15501	Construction Schedule	Lump Sum	All		
63635	Electrical Work	Lump Sum	All		
<b>TOTAL BID SCHEDULE “C”</b>		<b>\$</b>			

Written Bid for Schedule “C”:

\_\_\_\_\_

\_\_\_\_\_  
Signature of Bidder

\_\_\_\_\_  
Date

**Bid Schedule Summary:**

Schedule “A”: \$ \_\_\_\_\_  
 Schedule “B”: \$ \_\_\_\_\_  
 Schedule “C”: \$ \_\_\_\_\_

Submitted By: \_\_\_\_\_  
 Name of Contractor

**Exhibit 7-6 – ALTERNATIVE BID PROPOSAL**  
 (Continued)



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## Chapter 8

# CONSTRUCTION ENGINEERING AND CONSTRUCTION

The purpose of this Chapter is to provide guidance to the Local Entity on construction oversight requirements for Federal-aid CTEP projects.

### 8.1 REQUIREMENTS

The requirements in this Section provide basic construction engineering and construction references for the Local Entity.

#### 8.1.1 Federal Requirements

The following are select Federal construction engineering and construction documents that the Local Entity should review:

- 23 CFR 172, *Administration of Engineering and Design Related Service Contracts*;
- 23 CFR 633, *Required Contract Provisions*;
- 23 CFR 635, *Construction and Maintenance*;
- 29 CFR 5.31, *Meeting Wage Determination Obligations*; and
- *Manual of Uniform Traffic Control Devices*.

#### 8.1.2 State Requirements

The following are select Montana construction engineering and construction documents the Local Entity should review:

- MCA 7-5-4308, *Procedures to Modify a Contract*;
- MCA 7-22-21, *County Weed Control*;
- MCA 15-50-2, *Tax on Contractors*;
- MCA 15-50-206, *Withholding License Fee from Payments – Refunds*;
- MCA 18-2-2, *Performance, Labor and Material Bonds*;
- MCA 18-2-113, *Architects on Public Buildings to be Certified*;
- MCA 18-2-114, *Seal and Signature of Architect on Plans*;
- MCA 18-2-121, *Engineer or Land Surveyor to Supervise Project*;
- MCA 18-2-201, *Security Requirements*;
- MCA 37-65-308, *Deposit of License Fees*;
- MCA 37-66-308, *Display of License – Seal of Landscape Architect*;

- *MCA 37-67-314, Issuance of Licenses – Seal of Professional Engineer or Professional Land Surveyor – Enrollment Card for Interns;*
- *MCA 39-9-2, Contractor Registration;*
- *MCA 49-3-207, Nondiscrimination Provision in All Public Contracts;*
- *MCA 60-4-401, Relocation of Utilities;*
- *MCA 61-8-2, Traffic-Control Devices;*
- *MDT Construction Administration Manual; and*
- *MDT Civil Rights Manual.*

## **8.2 CONSTRUCTION PROCESS**

### **8.2.1 General**

The Construction Engineering (CE) Account is used to pay for construction contract administration, construction inspection and all other related documentation requirements. The Construction (CN) Account is used to pay for contracted construction services, procurements and Local Entity Force Account activities. See [Section 3.1.2](#) for additional guidance on construction funding accounts.

A Construction Checklist is provided in [Exhibit 8-1](#), which summarizes the typical construction engineering activities. An electronic copy of this checklist is available on the [CTEP website](#). For additional guidance on the construction process, see the *MDT Construction Administration Manual*.

### **8.2.2 Consultants**

In general, a licensed architect or engineer will be required to monitor the project construction. If the Local Entity is unsure that the project will require a licensed architect or engineer, it should consult its legal counsel or ask the CTEP Section for assistance. A Local Entity may hire a consultant or have a qualified in-house person perform the project construction oversight. If the Local Entity uses a consultant, the Entity is required to follow the procedures discussed in [Chapter 5](#) for selecting and monitoring the consultant. The consultant will be responsible for conducting the Local Entity's duties as discussed in this Chapter. However, the Local Entity is ultimately responsible for all construction activities even though a consultant may have been hired to conduct these activities.

### **8.2.3 Preconstruction**

#### **8.2.3.1 Contract Award**

Once MDT provides written approval of the bid award, the Local Entity is responsible for issuing the Notice of Award and preparing the contract. Before the Local Entity can execute the contract, the contractor must sign the contract and furnish the Entity with the required insurance certificates, performance and payment bonds and contractor registration listed in the Notice of Award letter (*MCA 18-2-201*).

Immediately after the contract has been awarded, complete the Contract Award Report, [Exhibit 8-2](#), and submit it to the State of Montana Department of Revenue. For more information on this report, visit the State of Montana Department of Revenue website.

Prior to start of construction, notify MDT of the architect or engineer in charge of the construction work. In addition, identify the employee or elected official who will have overall

responsibility of the project. This person must be someone with sufficient knowledge of the process to make decisions and to ensure all Federal requirements are met.

### **8.2.3.2 Preconstruction Conference**

Schedule a Preconstruction Conference as soon as practical after the contract agreement is executed. Conference attendees should include all contractors, subcontractors, utility companies, railroad companies, MDT District Liaison and other agencies with interests in the intended construction. Prepare the materials needed for the conference (e.g., agenda, notes, forms and posters, roster of expected participants, current approved wage determination) and create individual packets for each conference participant.

The Conference represents a key opportunity for the Local Entity and the contractor to review contract requirements prior to beginning construction. Consider the following agenda items for the Preconstruction Conference:

1. Identify the official representatives of each participating organization and how they can be contacted for the official roster. Include this list with the Preconstruction Conference minutes.
2. Outline the responsibilities of the architect or engineer, if applicable. Responsibilities may include construction monitoring, review of contractor payrolls, certification of progress payment request, etc.
3. Note the responsibilities of the Local Entity. These may include on-site employee interviews, Bulletin Board postings inspection, resolution of labor complaints, etc.
4. Identify the responsibilities of the contractor. These may include bulletin board postings; conformance to prevailing wage determination and other labor standards; civil rights regulations, EEO contract compliance and DBE requirements; materials guaranty; timely submission of required reports; etc.
5. Identify the responsibilities of the subcontractors. These will generally be the same responsibilities as the contractor (e.g., prevailing wage rates and labor standards). Written contracts are required for all subcontracted work.
6. Indicate who will be responsible for project inspections.
7. Identify all forms the contractor must submit.
8. Provide a general discussion of the contract terms (e.g., timing of requests for partial payments).
9. Note the schedule for construction completion. The contractor should provide time frames for sequences of major construction activities from beginning of construction to final project completion.

After the conference, distribute the minutes of the conference to all attendees and place a copy in the construction project file. A Federal-aid CTEP Civil Rights Agenda can be included with the Preconstruction Conference meeting notes; see [Exhibit 8-3](#). A copy of this agenda can also be found on the MDT Civil Rights website or by contacting the MDT District Liaison, CTEP Section or Civil Rights Bureau.

#### **8.2.3.3 Notice to Proceed**

Upon execution of the contract and conclusion of the Preconstruction Conference, provide the prime contractor with a written Notice to Proceed. This notice establishes the construction start date and estimated completion date. Although a Notice to Proceed may have been issued, contract work may not begin until the Preconstruction Conference is held.

#### **8.2.4 Contract Monitoring**

Throughout the construction period, the Local Entity is responsible for monitoring the contractor for:

- performance with contract conditions, special provisions and technical specifications;
- contract time; and
- compliance with all applicable Federal, State and local regulations.

##### **8.2.4.1 Job Bulletin Board**

Each prime contractor must create and maintain a Job Bulletin Board. Information posted on this bulletin board applies to the prime contractor and all applicable subcontractors. The Local Entity must check the contractor's job bulletin board periodically for the following:

- current EEO submission approval letter from Civil Rights Bureau,
- Contractor EEO Policy Statement,
- Contractor EEO Officer Letter of Appointment,
- Contractor Discrimination Complaint Procedure,
- Contractor Employee Discrimination Complaint Form,
- EEO is the Law Poster,
- Dual Employment/Notice Poster,
- FHWA Form 1273,
- Wage Rate Information Poster,
- current wage rates,
- False Statements Poster, and
- US DOT Hotline Information regarding DBE Fraud Poster.

Packets of the appropriate posters are available from the MDT Civil Rights Bureau.

[Exhibit 8-3](#) is a sample of a Federal-aid CTEP Civil Rights Agenda, which provides a summary of requirements pertaining to civil rights activities. The latest copy of this agenda can be obtained from the MDT Civil Rights website or by contacting the MDT District Liaison, CTEP Section or Civil Rights Bureau.

#### **8.2.4.2 Spot Check Interviews**

The Local Entity is responsible for interviewing the contractor and subcontractor employees to determine the type of work they are performing, their wages and whether EEO requirements are being met. Compare the wage information derived from the interviews with the certified payrolls and applicable wage rates provided by the contractor. If there are any discrepancies, contact either the Montana Department of Labor or MDT Civil Rights Bureau, as appropriate. See the wage rate schedules in the contract documents for guidance on reporting any discrepancies.

Local Entities must also ensure all contractor and subcontractor employees know the location of the Job Bulletin Board, their wage rate and work classification (when Federal Davis-Bacon Wage Rates apply) and how to contact their EEO Officer. If a contractor or subcontractor employee is unaware of any of these items, document this information and take immediate action to correct the situation.

The Labor Compliance Spot Check Form may be used to conduct spot check interviews; see [Exhibit 8-4](#). A copy of this form is available from the MDT Civil Rights Bureau website. Spot check interviews may be conducted anytime during the project.

Conduct spot check interviews by selecting a random number of contractor employees, representative of the various crafts, to interview. Select a different group of contractor employees for the second spot check interview. In general, interview at least one third of the contractor's personnel during each spot check. Be advised that the MDT Civil Rights Bureau may conduct on-site, unannounced visitations at any time. It is the responsibility of the Local Entity to furnish all information and provide assistance to allow the Civil Rights Bureau to make a complete and detailed investigation of the project.

If the contractor's workforce is comprised of four or less employees, interview all employees in the initial spot check interview. If there is no employee turnover, follow-up spot check interviews are not necessary unless problems are suspected.

When Federal Davis-Bacon Wage Rates are required and once the spot check has been completed, compare the data obtained from the interviews with the contractor's certified payroll information. Ensure the payroll information week ending date is the same week as when the interviews were conducted. All persons interviewed must be on the payroll and paid wages for the proper labor classification. If the employees are not on the payroll for the corresponding week, notify the contractor immediately and request a supplemental payroll. Do not allow the contractor to resubmit a revised certified payroll.

For additional information on contractor employee monitoring, see the *MDT Civil Rights Manual*.

### **8.2.4.3 Disadvantaged Business Enterprise Monitoring**

Local Entities are encouraged to employ Disadvantaged Business Enterprises (DBEs) on their CTEP projects. To assist with this effort, the MDT DBE Officer will forward the Local Entity's advertisements to Montana DBE-certified companies to encourage their participation. Local Entities can inform the DBE Supportive Services Office of their advertisements for contractors and/or consultants through an online form located on the MDT website.

In general, expenditures to DBEs may only be counted towards DBE goals when it is determined that the DBE is performing a commercially useful function (CUF) on the contract. The Local Entity should monitor the performance of DBEs to ensure performance of a CUF, by using the CUF Review Report; see [Exhibit 8-5](#). A copy of this form is available from the MDT Civil Rights Bureau. When complete, submit this report to the CTEP Section for evaluation.

For more information on DBE monitoring, see the *MDT DBE Program Manual*.

### **8.2.4.4 Certified Payroll**

#### **8.2.4.4.1 Requirements**

Certified payroll requirements on CTEP projects are only required when the Federal Davis-Bacon Wage Rates are used; however, most Local Entities require contractors to submit weekly-certified payrolls for all projects. A sample certified Payroll Form and instructions are provided in [Exhibits 8-6](#) and [8-7](#), respectively. For more information on the Payroll Form, visit the US Department of Labor website. Payrolls are confidential documents because they contain social security numbers and should never be released.

The prime contractor and all subcontractors must give the Local Entity one original and one copy of each weekly certified payroll within seven days of the end of the pay period. Delay in submitting the certified payroll can result in withholding of progress payments. All persons performing work on the job site must be on the payroll. A sample Payroll Check Sheet is provided in [Exhibit 8-8](#) to assist with ensuring payroll compliance. For more information on this check sheet, contact the MDT Civil Rights Bureau.

Certified payrolls and statements of compliance must be complete and reviewed by the Local Entity. A portion of the review must consist of comparing the certified payroll with information gathered from the spot check interviews; see [Section 8.2.4.2](#).

Prime contractors are responsible for submitting their subcontractor's payrolls. The prime contractor must preserve all payroll records, including time cards, for at least three years after the completion of the contract.

#### 8.2.4.4.2 Payroll Content

All payrolls must contain the following information:

- each employee's full name, address and social security number (each employee's address must also be on the payroll for the first week the employee worked on the project). General delivery (e.g., rural route number, PO Box) is not an acceptable address. The employee's address is not required on subsequent payrolls unless an address change occurs;
- each employee's work classification describing the work being performed;
- each employee's hourly wage rate, and if applicable, overtime hourly wage rate;
- fringe benefits, when paid in cash. If not paid in cash, the payroll must designate how and where the fringe benefits were paid;
- each employee's daily and weekly hours worked in each classification, including actual overtime hours worked; and
- net wages paid.

#### 8.2.4.4.3 Deductions

The only legal deductions that may be withheld are State and Federal withholding tax and FICA (Medicare and Social Security Tax). The following deductions may be withheld from the employee's paycheck:

1. Voluntary. Voluntary deductions are withheld from an employee's wages and shown on the certified payroll. Voluntary deductions can include travel advances, tool advances, cash advances, credit union deposits, etc. Voluntary deductions must be signed by the employee and include the following information:
  - employee name,
  - amount of the deduction,
  - duration of the deduction, and
  - reason for the deduction.

The contractor must provide the Local Entity a copy of this signed authorization with the first payroll in which the deduction occurs. Repeat this process for each Federal-aid highway contract the employee is working on.

2. Involuntary. Involuntary deductions are court-ordered deductions and must be explained to the employee by the employer in writing. Involuntary deductions include child

support, garnishment, etc. The contractor must indicate these deductions on the certified payroll. The written explanation must include the following:

- employee name,
- amount of the deduction,
- duration of the deduction, and
- reason for the deduction.

The employer must provide the employee with a copy of this written information with the first payroll on which the deduction occurs. Repeat this process for each Federal-aid highway contract the employee is working on.

#### 8.2.4.4.4 Overtime

All hours worked in excess of 40 hours a week on Federal-aid projects must be paid to the employee at 1.5 times their basic wage rate. The term “basic wage rate” is the straight time, hourly rate being paid. Fringe benefits are not paid at the overtime rate.

#### 8.2.4.4.5 Supplemental Payrolls

If there is an underpayment of wages, a supplemental certified payroll must be provided as proof that restitution has been made. The supplemental payroll should only indicate the amount paid to the employee as restitution, not the entire amount paid for the week that the underpayment occurred. In some instances, it may be necessary to furnish additional proof of payment. Willful failure to pay any wages due, including fringe benefits, may result in fines, debarment and possible criminal action. Supplemental certified payrolls may be requested if problems occur (e.g., lack of classification, improper identification, omitted employees).

#### 8.2.4.4.6 Fringe Benefits

The prevailing fringe benefits are set forth in the contract wage determination and are required to be paid for straight hours worked unless otherwise stated in the wage rate determination documents. The appropriate sections of the certified payroll forms must indicate how fringe benefits are paid, so check either box or both, as appropriate.

The Local Entity will periodically require contractors to provide evidence that fringe benefits have been paid. This evidence may consist of copies of canceled checks and/or trust fund reports. The objective is to ensure labor compliance, not penalize the contractor with sanctions when violations occur.

#### 8.2.4.4.7 Shifting

When a portion of wages are deducted from an employee's pay and added to the fringe benefit rate, this process is known as "shifting." Under the provisions of 29 *CFR* 5.31, any amount of money may be shifted from wages to fringe benefits. Normally, additional money is shifted into fringe benefits to defray health insurance costs, 401K plans, etc.

The amount of money paid to wages and fringe benefits are called the wage/fringe package. Regardless of the amount of money shifted from wages to fringe benefits or vice versa, the wage/fringe package can be no less than the total, which is published in the contract. This procedure is permitted by US Department of Labor regulation up to 40 hours in a workweek. Overtime must be paid on the published wage, which includes the appropriate zone, as listed in the contract, not on the wage after shifting.

When a contractor uses the shifting process, the contractor must provide a letter of explanation to the employee with the first payroll that the shifting occurs. The contractor must also attach to the letter of explanation a copy of the collective bargaining agreement, which outlines the requirement for the shifting.

#### 8.2.4.5 Contractor Payments

Payments to the contractor must be based on measurements of work performed (i.e., quantities used) and the unit prices submitted with the contractor's bid proposal. Progress payments based on the work progress ensures contractors are fairly compensated and public funds are not expended on work that has not been completed.

In the event a contractor is unable to substantially complete a construction project within the specified contract time, the Local Entity may assess liquidated damages if specified in the contract agreement. The amount of liquidated damages can be deducted from any payment due to the contractor. These assessments must be consistent with the corresponding provisions of the contract documents.

#### 8.2.4.6 Monthly Invoices

Each month, the Local Entity is responsible for preparing a progress estimate based on the quantities and amount it paid the contractor. Progress estimates should show the quantity and amount of each item completed during the period, totals completed to date and total payment for the period. Progress estimates may be forwarded to the contractor for review and signature. Contractors are not required to submit a pay request; however, doing so will allow the Local Entity to independently compare quantity measurement records prior to requesting reimbursement from MDT.

The Local Entity should submit the progress invoice to MDT for reimbursement on a pre-selected date each month. Only submit one invoice per month for each CTEP project. MDT will

reimburse the participating percentage of the invoice estimate, minus retainage, up to the limit of the CTEP funds authorized, by account. The Local Entity must secure MDT's approval before overrunning the contract award amount.

Include a copy of the progress estimate and invoice along with all support documents in the project files. The support documentation should clearly demonstrate that the work completed is in conformance with the plans and specifications (e.g., signed and dated inspection reports). Document all questions that may have arisen on quality and/or quantity of work. Arrange the support documentation so that it shows a diary of the inspections and can be easily audited.

#### **8.2.4.7 Retainage and Gross Receipts Tax**

Partial payments are generally 95% of the total amount of compensation earned. The remaining 5% is held pending the final inspection and acceptance of work. The actual amount retained may vary depending on the amount of the contract, construction progress and other specific provisions included in the contract agreement. Per *MCA 28-2-21-10*, the maximum retainage allowed is 5%.

In addition to retainage, the Local Entity may retain 1% of the total amount (CTEP and Local Entity matching funds) of each partial payment due to the contractor and transmit these funds to the Montana Department of Revenue for the Contractor's Gross Receipts Tax. Note that this is tax on the contractor and does not affect the amount of CTEP funds reimbursed to the Local Entity. Contracts less than \$5,000 are exempt from this provision. To request a copy of the applicable form, contact the Contractor Gross Receipts Section at the Montana Department of Revenue.

### **8.2.5 Construction Monitoring**

During construction, the Local Entity is responsible for monitoring the contractor to ensure the quality and quantity of work is acceptable and in compliance with the plans, specifications and Montana and Federal regulations.

#### **8.2.5.1 Materials Acceptance**

To ensure only quality materials are used, FHWA requires documentation for all materials used on Federal-aid projects. MDT may request a written project-testing summary to evaluate the Local Entity's compliance with program assurance testing and materials acceptance requirements.

Many items will only require a completed Miscellaneous Material Form and a manufacturer's certification. After inspecting the material and ensuring it meets the requirements of the contract documents, complete the Miscellaneous Material Form; see [Exhibit 8-9](#). For more information regarding this form, contact the MDT Materials Bureau.

[Exhibit 8-10](#) provides acceptance criteria for materials commonly used on CTEP projects. For large quantities or for materials not covered in [Exhibit 8-10](#), the Local Entity should use the testing and sampling requirements identified in the *MDT Materials Manual* or the applicable methods identified in the *Montana Public Works Standard Specifications*. Materials not covered in either document will require a special provision to identify the acceptance requirements. See [Section 7.3.4.2](#) for guidelines on preparing special provisions. If the Local Entity desires to add new items to [Exhibit 8-10](#), contact the MDT CTEP Project Manager. For more information regarding this form, contact the MDT Materials Bureau.

Unless prior arrangements have been made to have the test equipment and technician on the project to perform testing, send all materials and other items requiring testing to the testing lab. If the contractor schedules the testing, the contractor must submit the results of the tests to the Local Entity. Materials that do not meet the specified requirements may be rejected and/or be replaced at the discretion of the Local Entity, MDT and/or FHWA. Review the contract documents to see if retesting costs can be recovered from the contractor for failed materials.

Keep copies of all completed forms, manufacturer certifications, product labels, catalog cuts and test results in the contract project files. It is not necessary to submit this documentation to the CTEP Section unless requested by MDT. The MDT District Liaison will randomly audit project files to ensure the Local Entity has retained the necessary documentation for material acceptance.

#### **8.2.5.2 Inspection**

The Local Entity is responsible for monitoring the construction activities and for ensuring the contractor meets the contract document requirements. The Daily Inspection Report provided in [Exhibit 8-11](#) may be used to monitor the construction activities. Note that daily inspections are generally not required on CTEP projects; however, ensure that the construction engineer or architect is on site during key construction periods. The Daily Inspection Report is available on the [CTEP website](#).

At the completion of the project, the Local Entity is responsible for performing a final inspection to ensure that the work is complete and conforms to the plans and specifications. Additionally, the Entity must ensure that all Federal and State requirements (e.g., labor standards) have been satisfied, and all contract files are complete. Request the MDT District Liaison to join the Local Entity in the final inspection. If the project is acceptable, prepare and sign the Certification of Completion; see [Section 8.2.10](#).

#### **8.2.6 Change Orders and Extra Work**

Prior to beginning any work not defined in the original contract, the Local Entity should have a written policy for approving and documenting change orders and extra work orders (*MCA 7-5-4308*). It is important to distinguish between actual changes to the contract work, change orders and normal changes in quantities. Increases in quantities do not require a change order, but

constitute extra work. Examples of contract changes include changes to the contract requirements, design or scope of an approved project.

When a change to the Project Manual (plans and/or specifications) is required, the Local Entity must prepare a change order. Include with the change order request a detailed explanation for the required change and a summary of all costs associated with the change. Number the change orders in the order they occur. To ensure eligibility for FHWA participation, discuss all change orders in advance with the MDT District Liaison. In emergencies, verbal approval may suffice, but must be followed by submission of the written change order within 10 calendar days.

Forward all change orders to the MDT District Liaison. No reimbursement will be approved for change order work until the CTEP Section receives a copy of the change order. The Local Entity and contractor both must retain signed copies of all change orders in their project files.

For projects on the MDT maintenance system, MDT approval is required prior to the commencement of any work. Contact the MDT District Liaison to review the proposed change order work.

#### **8.2.7 Incidental Construction (Utility Involvement) Account Activities**

The Incidental Construction (IC) account is established to pay the costs related to the physical move or relocation of existing utilities by a utility or railroad company. This work generally occurs prior to awarding the main construction contract. During the preliminary engineering (design engineering) phase, MDT must approve the plans and specifications for any incidental construction work.

The Local Entity is responsible for monitoring the IC work to ensure adherence to the agreement provisions. Contact the MDT CTEP Project Manager if any utilities within the right-of way are affected by the project. For guidance on utility involvement, see [Section 6.3](#).

#### **8.2.8 Local Entity Construction (Force Account) Activities**

Force Account refers to the approved reimbursable expenditures for the Local Entity personnel, equipment and materials. Force account work can be used as part the Local Entity's share of the project costs. Note: FHWA limits reimbursable expenditures to Local Entity employees and equipment. The use of volunteers cannot be considered as a hard-dollar expense to the project; however, they can be used to lower project costs. The Local Entity must provide staff supervision of the work to ensure safe and effective work methods are used. Discuss liability issues regarding volunteer labor with the Local Entity's legal counsel.

Local Entity construction expenses will usually be accounted for by time, materials and equipment used. The CTEP Section will determine, on a project-by-project basis, the type and amount of force account activities that are eligible for Federal reimbursement. The Local Entity should notify the MDT CTEP Project Manager during the design phase if force account activities

are being considered. FHWA concurrence may also be required. The Local Entity should consider the following:

1. Time. Local Entities can be reimbursed for the Federal share of the cost of staff time attributable to actual construction work on the project. Time must be documented for each day. Use [Exhibit 8-12](#), Force Account Form, to track force account expenses. An electronic copy of this form is available on the [CTEP website](#).
2. Material. Local Entities can be reimbursed for the Federal share of the cost of materials attributed to the construction work. Expenses for Local Entity furnished materials will be determined by actual invoice or fair market value. Procurement of materials must adhere to Federal, State and local agency regulations. Obtain written approval from MDT before soliciting quotes to purchase materials. See [Exhibit 8-13](#), Request for Quotation Form, for more information. An electronic copy of this form is available on the [CTEP website](#).
3. Equipment. When it is determined that a portion of the construction work can be completed with Local Entity equipment, complete the Equipment Rental Rate Determination Form, [Exhibit 8-14](#). Prepare a separate form for each piece of equipment used on the project. Submit the forms with the equipment data to the CTEP Section and MDT will calculate the equipment rates. An electronic copy of this form is available from the [CTEP website](#).

MDT requires Local Entities to follow prudent purchasing practices. Because of the public visibility of most CTEP projects, maintaining a high level of public confidence regarding the expenditure of all public funds is vital, even for the purchase of seemingly small items or services.

### **8.2.9 Records Maintenance**

The Local Entity should maintain a set of contract files that contain the following:

- project cost estimates;
- evidence of easements and acquisitions;
- bid documents, including required civil rights, labor and other provisions;
- evidence of bid advertising;
- minutes of bid opening including tabulation of bids;
- evidence of low bid review;
- MDT concurrence in award letter;
- Notice of Award;
- executed contract documents with attachments;
- minutes of the Preconstruction Conference;
- Notice to Proceed with contracted construction;
- MDT authorization to obtain quotations;
- evidence of quotation review (tabulate quotes received);

- MDT authorization to proceed with procurement;
- monitoring and diary of Daily Inspection Reports;
- contractor's certified weekly payroll and signed statement of compliance;
- records of construction worker interviews;
- evidence of any violations and resolution of violations;
- evidence of materials acceptance and testing as required;
- evidence of final inspection;
- notice of acceptance of work;
- lien releases from all contractors and suppliers;
- evidence of disposition of outstanding claims; and
- daily Force Account Forms.

Maintain documentation of all compliance activities for three years after the official closure date noted on the closure letter received from MDT.

#### **8.2.10 Project Closeout**

When all construction items and project documentation requirements are complete and accepted, the Local Entity can petition MDT for final project acceptance and payment. The Local Entity should conduct the following:

1. Final Payment Estimate. Prepare the final payment estimate by:
  - calculating the quantities,
  - checking quantity calculations and documentation,
  - certifying that all materials conform to specifications,
  - certifying labor compliance, and
  - submitting the final payment to the contractor after securing the release of all claims.
2. Project Review. Contact the CTEP Section to review the project records before initiating the Certificate of Completion process.
3. Certificate of Completion. The Local Entity must submit a Certificate of Completion to the CTEP Section upon project completion. The Certificate of Completion must accompany the request for the final MDT acceptance review. Do not submit the Certificate of Completion until all reimbursement requests are made and approved. The Local Entity is responsible for processing contractor payments as specified in the contract documents.

The completed Certificate of Completion must be supported by documentation located in the project files. Where practical, use tables and charts to summarize information in each file. [Exhibit 8-15](#) provides a sample of the Certificate of Completion. An electronic copy of this certificate is also available on the [CTEP website](#).

Project Name:  
Project Number: ( )

<b>CONSTRUCTION CHECKLIST</b> <b>(Construction Engineering Activities)</b>	
<b>Construction Administration – Prior To Start Of Construction</b>	
<b>Contract Award</b>	
<input type="checkbox"/>	Received MDT written approval of the bid award. Do not send the Notice of Award until MDT has provided written approval of bid award.
<input type="checkbox"/>	Sent Notice of Award Letter to the contractor.
<input type="checkbox"/>	Sent the Contract Award Report (see <a href="#">Exhibit 8-2</a> of the <i>MDT CTEP Manual</i> ) to the Montana Department of Revenue immediately after the Notice of Award has been issued.
<input type="checkbox"/>	Received the signed contract, performance and payment bonds, insurance certificates and registration from the contractor.
<input type="checkbox"/>	Provided the CTEP Section with the name of the architect or engineer responsible for monitoring the project.
<input type="checkbox"/>	Provided the CTEP Section with the name of the Local Entity employee or elected official who will have overall responsibility of the project.
<b>Preconstruction Conference</b>	
<input type="checkbox"/>	Set conference date and time and invited the contractor, subcontractors, MDT District Liaison and other agencies with interests in the construction.
<input type="checkbox"/>	Prepared materials for the conference (e.g., agenda, notes, forms, posters, roster, current wage rate determination).
<input type="checkbox"/>	Discussed Federal labor standards, civil rights provisions, contract terms and project schedule with the contractor and subcontractors.
<input type="checkbox"/>	Discussed the responsibilities of the Local Entity, contractor and architect or construction engineer.
<input type="checkbox"/>	Distributed the minutes of the conference to all attendees and filed a copy in the project file.
<input type="checkbox"/>	Included a copy of the Federal-aid CTEP Civil Rights Agenda (see <a href="#">Exhibit 8-3</a> of the <i>MDT CTEP Manual</i> ) with the minutes of the conference.
<input type="checkbox"/>	Provided a written Notice to Proceed to the contractor.

### Exhibit 8-1 – CONSTRUCTION CHECKLIST

Project Name: \_\_\_\_\_  
 Project Number: (\_\_\_\_)

<b>CONSTRUCTION CHECKLIST</b> <b>(Construction Engineering Activities)</b>	
<b>Construction Administration – During Construction</b>	
<b>Contract Monitoring</b>	
<input type="checkbox"/>	Periodically checked the contractor's Job Bulletin Board.
<input type="checkbox"/>	Conducted spot check interviews with the contractor and subcontractors employees during the second and fourth week and once a month thereafter (see <a href="#">Exhibit 8-4</a> of the <i>MDT CTEP Manual</i> ).
<input type="checkbox"/>	Compared the results of the spot check interviews with the contractor's certified payroll information.
<input type="checkbox"/>	Ensured all personnel working on project site are noted on the contractor certified payroll at the appropriate wage rate and classification.
<input type="checkbox"/>	Ensured that the DBE contractor or subcontractor was actually supervising and performing the designated work.
<input type="checkbox"/>	Completed the DBE Commercially Useful Function (CUF) Report and submitted it to the CTEP Section (see <a href="#">Exhibit 8-5</a> of the <i>MDT CTEP Manual</i> ).
<input type="checkbox"/>	Ensured the employment goals contained in the EEO Special Provisions and the provisions in Part II of FHWA 1273 were met by the contractor and each subcontractor.
<input type="checkbox"/>	Received weekly certified payroll and statements of compliance from the contractor and subcontractors (see <a href="#">Exhibits 8-6, 8-7</a> and <a href="#">8-8</a> of the <i>MDT CTEP Manual</i> ).
<input type="checkbox"/>	Investigated and resolved labor complaints or other labor violations, where applicable.
<b>Contract Payments</b>	
<input type="checkbox"/>	Checked and documented all quantities used on the project
<input type="checkbox"/>	Prepared month progress reports for inclusion with the monthly invoices to MDT.
<input type="checkbox"/>	Submitted monthly progress reports and invoices to the CTEP Section for reimbursement.
<input type="checkbox"/>	Paid the contractor based on the quantities used on the project.
<input type="checkbox"/>	Retained 1% of the total amount of each partial payment due to the contractor and transmitted these funds to the Montana Department of Revenue.

Project Name: \_\_\_\_\_  
 Project Number: (\_\_\_\_)

<b>CONSTRUCTION CHECKLIST</b> <b>(Construction Engineering Activities)</b>	
<b>Construction Monitoring</b>	
<input type="checkbox"/>	Completed the Miscellaneous Material Form or conducted sampling and testing of all materials used on the project (see <a href="#">Exhibit 8-9</a> of the <i>MDT CTEP Manual</i> ).
<input type="checkbox"/>	Conducted regular inspections of the contractor's work (see <a href="#">Exhibit 8-11</a> of the <i>MDT CTEP Manual</i> ).
<input type="checkbox"/>	Evaluated and maintained a record of the contract time.
<input type="checkbox"/>	Ensured that the architect or engineer was on-site during key construction periods.
<input type="checkbox"/>	Prepared and submitted to the CTEP Section construction change orders when the plans and/or specifications were revised.
<input type="checkbox"/>	Received MDT approval for all change orders.
<b>Force Accounts</b>	
<input type="checkbox"/>	Received MDT approval for use of the Local Entity's personnel, equipment and/or materials on the project.
<input type="checkbox"/>	Completed the Force Account Form, Request for Quotation Form and Equipment Rental Rate Determination Form, as applicable (see <a href="#">Exhibits 8-12</a> , <a href="#">8-13</a> and <a href="#">8-14</a> , respectively, of the <i>MDT CTEP Manual</i> ).
<input type="checkbox"/>	Prepared the final payment estimate based on quantity calculations and documentation.
<b>Construction Administration – Project Closeout</b>	
<input type="checkbox"/>	Submitted the final payment to the contractor after securing the release of all claims.
<input type="checkbox"/>	Invited the MDT District Liaison to the final inspection and conducted the final inspection.
<input type="checkbox"/>	Requested the CTEP Section to conduct a review of the project records.
<input type="checkbox"/>	Received the signed Certification of Completion from the Contractor (see <a href="#">Exhibit 8-15</a> of the <i>MDT CTEP Manual</i> ).
<input type="checkbox"/>	Signed the Certification of Completion and submitted it to the CTEP Section.

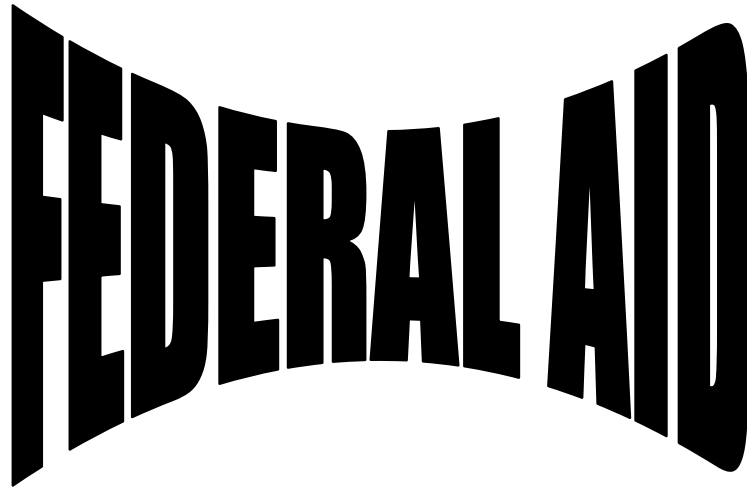
**Exhibit 8-1 – CONSTRUCTION CHECKLIST**  
 (Continued)

STATE OF MONTANA DEPARTMENT OF REVENUE <b>CONTRACT AWARD REPORT</b>			
<b>1</b>	<b>CONTRACT AWARDING AGENCY OR PRIME CONTRACTOR MUST COMPLETE THIS FORM AND MAIL IT TO THE MONTANA DEPARTMENT OF REVENUE IMMEDIATELY AFTER THE CONTRACT OR BID HAS BEEN OFFICIALLY AWARDED.</b>		
<b>2</b>	<b>Contract Awarded By (Agency or Prime Contractor)</b>  _____ Name _____ Address _____ City/Town _____ Zip Code _____	<b>MAIL TO:</b>  <b>Miscellaneous Tax Division            Department of Revenue            Mitchell Building            Helena, Montana 59620</b>	
<b>3</b>	<b>Contract Awarded to (Prime or Sub Contractor)</b>  _____ Name _____ Address _____ City/Town _____ Zip Code _____	<b>4</b>	<b>Montana Public Contractor's License Number</b>
		<b>5</b>	<b>Contract Award Date</b>
		<b>6</b>	<b>Construction Completion Date</b>
<b>7</b>	<b>Contract Number/Official Designation</b>	<b>8</b>	<b>Contract Amount</b>
<b>9</b>	<b>Description of work to be performed</b>		
<b>10</b>	<b>Location of work to be performed (be specific)</b>		
<b>REPORT SUBMITTED BY</b>		<b>Agency or Prime Contractor</b>	
<b>AWARD AUTHORIZATION</b>		<b>Authorized Representative</b>	<b>Date</b>

Exhibit 8-2 – CONTRACT AWARD REPORT

<b>STATE OF MONTANA DEPARTMENT OF REVENUE GROSS RECEIPTS WITHHOLDING REPORT</b>		<b>DEPARTMENT OF REVENUE USE ONLY</b>	
<p>The agency or contractor, must, in accordance with MCA 15-50-206, withhold 1% of incremental payments due the contractor or subcontractor or sub-subcontractor. Amounts withheld from a prime contractor must be forwarded with this report to the Department of Revenue. Amounts withheld from subcontractors must be reported on this form so that proper allocation of credit can be made from prime contractor's account to the subcontractor.</p>			
<b>1</b>	<b>Contract Awarded By (Agency or Prime Contractor)</b>  Name _____  Address _____	<b>MAIL TO:</b>  <b>Miscellaneous Tax Division Department of Revenue Mitchell Building Helena, Montana 59620</b>	
<b>2</b>	<b>Contract Awarded To (Prime or Sub-Contractor)</b>  Name _____  Address _____	<b>3</b>	<b>Montana Public Contractor's License Number</b>
		<b>4</b>	<b>Contract Award Date</b>
<b>5</b>	<b>Contract Number/Official Designation.</b>	>	
<b>6</b>	<b>Month and year increment payment earned.</b>	>	
<b>7</b>	<b>Gross amount due contractor or sub-contractor at the time of this report.</b>	>	
<b>8</b>	<b>If payment made to prime contractor, Amount withheld (1% of line 7) remittance must accompany report.</b>	>	
<b>9</b>	<b>Net amount paid contractor or subcontractor at the time of this report.</b>	>	
<b>10</b>	<b>Check proper box for type of report being filed:</b>  <input type="checkbox"/> Remittance attached for credit to prime contractor's account. <input type="checkbox"/> Subcontractor Allocation. Authorization to transfer credit to the subcontractor. Failure of prime contractor to file a distribution report within thirty (30) days of payment will result in a 10% penalty.  Date payment made to subcontractor: _____.		
<b>11</b>	Location and brief description of work being performed:		
<b>REPORT SUBMITTED BY</b>		Agency of Prime Contractor	
<b>AWARD AUTHORIZATION</b>		Authorized Representative	Date

**Exhibit 8-2 – SAMPLE CONTRACT AWARD REPORT**  
(Continued)



# **CTEP Civil Rights** **Preconstruction** **Agenda**

(Attach to Engineer's Preconstruction Minutes)

## **Civil Rights Agenda: Federal-aid CTEP Projects**

**Part 1: Project Information**

**Part 2: EEO Pre-Bid Contract Compliance**

**Part 3: Labor Compliance**

**Part 4: EEO Post-Bid Contract Compliance**

**Exhibit 8-3 – SAMPLE FEDERAL-AID CIVIL RIGHTS AGENDA**

**PART 1: PROJECT INFORMATION**

Preconstruction Attendees: \_\_\_\_\_ Date: \_\_\_\_\_

On-System: \_\_\_\_\_ or Off-System: \_\_\_\_\_

Project: \_\_\_\_\_ Location: \_\_\_\_\_

Prime Contractor: \_\_\_\_\_ Sub-contractor(s) (written contract?): \_\_\_\_\_

District: \_\_\_\_\_ Information Presented by: \_\_\_\_\_

MDT's Liaison: \_\_\_\_\_ Local Program Administrator: \_\_\_\_\_

Estimated Start Date: \_\_\_\_\_ Estimated Completion Date: \_\_\_\_\_

**PART 2: EEO PRE-BID CONTRACT COMPLIANCE**

- Have wage rates been included with all pre-bid advertising documents? This is required for all on-system federal aid contracts of \$2,000 or more.
- Have the PR 1273 (Required Contract Provisions: Federal-aid Contracts) been included with all pre-bid advertising documents?
- Have Americans with Disabilities Act (ADA) requirements been considered and resolved? If questions, contact the MDT ADA Coordinator at (406) 444-6331.
- Have Disadvantaged Business Enterprises (DBE) requirements [DBE Schedule of Participation; DBE Substitution; CUF Monitoring Report; etc.] been considered and resolved? Please submit construction payment amounts to the MDT DBE Manager monthly at fax (406) 444-7685. If questions, contact the MDT DBE Manager at (406) 444-6331.

**PART 3: LABOR COMPLIANCE**

**Wage rates and the PR 1273 must be physically affixed to the prime and any subcontracts and cannot just be referenced in the contract. This is the Local Program Administrator's responsibility to assure it is accomplished.**

**Zone(s)**

*["... determined by measuring the road miles over the shortest practical maintained route from the County Courthouse of the following towns (see General Wage Decision) to the center of the job." Exemptions from zone pay include: Electricians, Line Construction, Painters, and Welders. Is the zone(s) specified on contract? If multiple sites for the project, each site can be listed with the different appropriate zone.]*

This Federal-aid project is located in zone \_\_\_\_\_ (Is it specified in contract?)

**Exhibit 8-3 – SAMPLE FEDERAL-AID CIVIL RIGHTS AGENDA**

(Continued)

**Payrolls**

1. Who is the Contractor's project manager?
2. What is the anticipated workday?
3. Original copy of certified payroll to Local Program Manager.
4. Statement of Compliance must be attached to each certified payroll. Be sure the appropriate fringe benefit box has been checked and that the statement is signed.
5. Payroll records must be retained by the contractor for a period of three years.
6. Owners and other salaried supervisors must be shown on the payroll when performing duties on the project site.
7. Prime and each subcontractor must submit certified payrolls on a weekly basis.
8. Check the payrolls weekly to ensure the right wages have been paid to each person employed on the project site.

**Fringe Benefits**

The contractor has three options:

- a. ☐ Fringe Benefits may be paid directly to employees each week, in cash, or
- b. ☐ Fringe Benefits may be paid to a trust fund (approved by U.S. DOL), or
- c. ☐ Fringe Benefits may be paid in a combination of a. and b. above.

Name of trust fund? \_\_\_\_\_

If fringe benefits are paid to a trust fund for which the employee is not a member, the contractor is obligated to provide information to the employee concerning access to the trust fund. This information must be submitted to the Local Program Administrator with the first payroll.

**Work Week**

General Wage Decisions (attached to the contract) set the Base pay + zone pay + fringe benefits which equals the total wage package. A contractor may opt to pay more than the wage package. 40 hours is a standard workweek – on the 41st hour, overtime (time and a half) must be paid

Overtime is based on 1.5 X base rate + zone pay, or 1.5 X the higher wage rate the contractor has chosen to pay. Fringe benefits are always paid straight time. Fringe benefits will be indicated on the certified payroll as paid in cash and/or to an approved bona fide fund. In both straight and overtime situations, worker must be paid at least what they would have earned under Davis-Bacon wages.

**Exhibit 8-3 – SAMPLE FEDERAL-AID CIVIL RIGHTS AGENDA**  
(Continued)

**Legal Deductions**

1. The only legal deductions are FICA (Social Security & Medicare), State (SIT), and Federal (FIT) Taxes.
2. Deductions other than those mentioned above must be accompanied by a deduction authorization signed by the employee. The signed and dated authorization must include the specific weekly dollar amount and the specific reason for the deduction.
3. If a deduction for child support or a garnishment occurs, a letter on the company's letterhead explaining the judicial decree must accompany the first payroll on which the deduction occurs.

**Shifting**

Shifting from the wage rate to the fringe benefits to cover higher fringe benefits than those in the contract is permitted if it is a requirement of a bargaining agreement or other trust fund agreement. The wage/fringe package must remain the same or higher than that in the contract wage rates. Overtime must be calculated on the published Davis-Bacon wage rate or the wage actually being paid if higher than the published rate. Once the overtime rate is calculated, shifting can then occur.

**Work Classifications**

What work classifications will be working on this project? \_\_\_\_\_

Are those worker classifications to work on this project covered by the applicable wage decision?

☐ Yes ☐ No

If no is answered above, does a request for authorization of additional classification and rate need to be submitted?

☐ Yes ☐ No

1. Flaggers are covered by Davis-Bacon Wage Rates. (All flaggers must be certified)
2. Foremen and supervisors working with the tools of the trade more than 20% of the time must be paid a minimum of the appropriate wage rate for the work they are performing. All foremen and superintendents must appear on the certified payroll, even if salaried.
3. Employees working at other than their assigned classifications for 20% or more of their time must be paid for the work they are performing or at the higher of the two rates.
4. Employees must be classified and paid for the work they are performing. The classification codes shown on the payroll must clearly identify the work being performed. We request that all contractors use the MDT groups from the contract wage rates. If your computer software will not print them, please write them in.

If the contractor uses a classification system other than what is provided in the contract, it must be easily comparable to the MDT group system and must identify the wage decision number. Two copies of the contractor's code conversion sheet must be provided with the FIRST payroll submitted for each project.

**Exhibit 8-3 – SAMPLE FEDERAL-AID CIVIL RIGHTS AGENDA**

(Continued)

**Example**

Contractor Code                      MDT Code  
Common laborer        =        Laborer, group 2

**Site of Work**

[This may determine whether Federal Davis-Bacon wages apply to particular classifications of workers]:

The site of work is limited to the physical place or places where the construction called for in the contract will remain when work on it has been completed, or other adjacent property used by the contractor or subcontractor which can be reasonably said to be included in the site.

If gravel pits or batch plants are associated with this job, contact the Civil Rights Bureau at (406) 444-6331.

If there is a question as to whether a project is affected by Site of Work regulations, please contact the Civil Rights Bureau at (406) 444-6331.

**PART 4: EEO POST-BID CONTRACT COMPLIANCE**

- Does the prime contractor with contracts of \$10,000 or more and all subcontractors have a current annual EEO submission prior to performance of any work?
  - a. The EEO Submission consists of a Company Policy Statement, EEO Officer Designation, Company Discrimination Complaint Procedures, and Complaint Form. This is available on the MDT website.
  - b. Annual EEO Submissions must be received in Helena and approved prior to the contractor beginning work on the project site and annually thereafter as long as that contractor works on the project.
- The Prime Contractor's EEO Officer is. This person is expected to:
  - attend compliance reviews;
  - demonstrate what affirmative action the prime and each subcontractor have taken;
  - provide documentation of all recruitment efforts (including subcontractors).
    - Minority and/or female referral sources can be obtained from Civil Rights. The U. S. Department of Labor has held that it shall be no excuse if the union with which the contractor has a bargaining agreement fails to refer a minority or female.
    - Obtain the current annual EEO submissions from the prime contractor and any subcontractors that will be working on the job prior to any work starting. This is required for all prime contractor federal aid contracts of \$10,000 or more.
- Schedule the preconstruction conference. Invite the prime contractor and the CTEP Liaison. If any questions, contact the MDT CTEP EEO Specialist at (406) 444-6331.

**Exhibit 8-3 – SAMPLE FEDERAL-AID CIVIL RIGHTS AGENDA**

(Continued)

**AFTER WORK HAS BEGUN**

- Is the project site bulletin board in place with all the correct postings from the prime contractor and each subcontractor? Bulletin Boards must be located in an area accessible to all employees. Three ring notebooks can only be used if the work is mobile such as fencing, striping, or traffic control. Subcontractors may use the Prime's bulletin board as long as their own information is posted on it.
- Contents of Bulletin Board: Posters: EEO Is The Law, Wage Rate Information, and Dual Employment; Current Annual EEO Submission: Company Policy Statement, Identification and responsibility of the EEO Officer, Complaint Procedures and Complaint Form; Contract Info: FHWA 1273 (Required Contract Provisions) and Davis-Bacon Wage Rates for this project and, DBE Hotline poster.
- Field Interviews may be conducted with LC-1's during working hours by the Civil Rights Bureau staff, the CTEP Liaison, or the Local Program Administrator.
- On-site EEO Meetings will be conducted weekly; every other week; or monthly. Minutes and attendance roster must be provided to the MDT Inspector. The MDT Inspector shall be notified when the EEO on-site meeting will be held.
- Is the contractor employing a core crew or did new employees get hired for this project? If yes, what good faith efforts were made to recruit qualified minority and female employees?
- Did the prime pay all subcontractors within 7 days after receiving a periodic or final payment? (28-2-2103(2) MCA. (No payment is required unless the subcontractor submits a billing statement or invoice.)

**If you have questions during the preconstruction conference, please call the Civil Right Bureau at (406) 444-6334, TTY (800) 335-7592.**

**Exhibit 8-3 – SAMPLE FEDERAL-AID CIVIL RIGHTS AGENDA**  
(Continued)

**Available from Montana Department of Transportation Civil Rights Bureau website or the Civil Rights Bureau at (406) 444-6331, TTY (800) 335-7592**

- Civil Rights Bureau (CRB) Manual (labor and EEO)
- DBE Newsletter
- CTEP Civil Rights Agenda
- CTEP Investigations Handbook
- EEO-Labor Compliance Spot Check
- Equal Employment Opportunity (EEO) Submission Sample Format
- Federal Wage Decisions
- Job Site/ Bulletin Board Postings
- Job Site Bulletin Board Inspection Checklist
- Required Contract Provisions – Federal-aid Construction Contracts (PR 1273)
- Seven-day Payment to Subcontractors Handout
- Site of Work Explanation
- Title VI Complaint Procedures/Forms
- Title VI Contract Language
- Title VI Public Hearing Form
- Title VI Rights Pamphlet

**Exhibit 8-3 – SAMPLE FEDERAL-AID CIVIL RIGHTS AGENDA**  
(Continued)

FORM LC-1

**LABOR COMPLIANCE SPOT CHECK FORM**

PROJECT NO. \_\_\_\_\_ DISTRICT \_\_\_\_\_

DESIGNATION \_\_\_\_\_ DATE \_\_\_\_\_

CONTRACTOR \_\_\_\_\_ INTERVIEWER \_\_\_\_\_

PRIME CONTRACTOR \_\_\_\_\_ SUBCONTRACTOR \_\_\_\_\_

Form LC-1 must be attached to the corresponding payroll. Interviews are to be conducted monthly. Retain one copy for your files. See the *MDT Civil Rights Manual* for more information.

Employee Name	Classification	Pay Rate	OT?	Work Performed	1. Attend EEO Meetings? 2. EEO Officer? 3. Complaint Filing? 4. Bulletin Board? 5. Benefit Program? (Circle if known)	Are you employed by another contractor on this project? If yes, write the name of the contractor.
1.					1 2 3 4 5	
2.					1 2 3 4 5	
3.					1 2 3 4 5	
4.					1 2 3 4 5	
5.					1 2 3 4 5	
6.					1 2 3 4 5	
7.					1 2 3 4 5	
8.					1 2 3 4 5	
9.					1 2 3 4 5	
10.					1 2 3 4 5	
11.					1 2 3 4 5	
12.					1 2 3 4 5	
13.					1 2 3 4 5	
14.					1 2 3 4 5	
15.					1 2 3 4 5	
16.					1 2 3 4 5	
17.					1 2 3 4 5	

\* Are you receiving time and a half wages for all work over 40 hours in a workweek?

**Exhibit 8-4 – LABOR COMPLIANCE SPOT CHECK FORM**

**COMMERCIALLY USEFUL FUNCTION REVIEW REPORT****Project Site Review**

Contract No:		Project No:	
Project Location:		District:	
EPM:		Reviewer:	Review Date:
Prime Contractor:		DBE Subcontractor:	
DBE Subcontractor State Date:		Anticipated Subcontractor Completion Date:	
<b>Work Item</b>	<b>Work Item Description</b>	<b>Approximate % Complete as of this Date</b>	<b>Subcontracted Dollar Amount</b>
DBE Project Superintendent/Foreman:		Prime Contractor Superintendent/Foreman:	
Exclusively employed by the DBE?		Exclusively employed by the Prime Contractor?	
Shown on the DBE's Payroll?		Shown on the Prime Contractor's Payroll?	
Shown on any other firm's payroll?		Shown on any other firm's payroll?	
If yes, whose?		If yes, whose?	
Directly reports to:		Directly reports to:	
List names of DBE employees observed on project site. Use additional pages as needed.			
<b>Name</b>	<b>Work Performed</b>	<b>Work Classification</b>	<b>Wage</b>
Are any of the DBE's employees shown on any other contractor's payroll?		Yes	No
List DBE's major equipment used on this project:			
Does the equipment have the DBE's name and/or logo?		Yes	No
Does the equipment belong to the DBE?		Yes	No
If leased or rented, is there a copy of the lease or rental agreement?		Yes	No
Has any other contractor performed work that was to be performed by the DBE?		Yes	No
What work items were performed by the identified contractor?			
Were these items on the Schedule?		Yes	No
How often has the DBE owner been present on the job site?		Does the DBE appear to have control over their work and employees?	
Comments:		Yes	No
Has the Civil Rights Bureau, DBE Program been notified of problems or changes to the DBEs subcontract?		Yes	No
If no, explain why.			

**Exhibit 8-5 – COMMERCIALLY USEFUL FUNCTION REVIEW REPORT**

[illegible]

### Exhibit 8-6 – PAYROLL FORM

**Exhibit 8-6 – PAYROLL FORM**  
(Continued)

Date: July 5, 1983

I, Samantha Sammons  
(Name of signatory party), Bookkeeper  
(Title)

do hereby state:

(1) That I pay or supervise the payment of the persons employed by Aces Construction Company on the Happy Valley Manor  
(Contractor or subcontractor) (Building or work)  
101-35075; that during the payroll period commencing on the 83 day of June, 20 01, and ending the 4th day of July, 20 01 all persons employed on said project have been paid the full weekly wages earned, that no rebates have been or will be made either directly or indirectly to or on behalf of said Aces Construction Company from the full weekly wages earned by any person and that no deductions have been made either directly or indirectly from the full wages earned by any person, other than permissible deductions as defined in Regulations, Part 3 (29 CFR Subtitle A), issued by the Secretary of Labor under the Copeland Act, as amended (48 Stat. 948, 63 Stat. 108, 72 Stat. 967; 76 Stat. 357; 40 U.S.C. 276c), and described below:  
FICA, Federal, and State

Other: Vacation and Insurance

BE SURE TO INCLUDE EXPLANATION AND SIGNED STATEMENT FOR ALL "OTHER" DEDUCTIONS.

(2) That any payrolls otherwise under this contract required to be submitted for the above period are correct and complete; that the wage rates for laborers or mechanics contained therein are not less than the applicable wage rates contained in any wage determination incorporated into the contract; that the classifications set forth therein for each laborer or mechanic conform with the work he performed.

(3) That any apprentices employed in the above period are duly registered in a bona fide apprenticeship program registered with a State apprenticeship agency recognized by the Bureau of Apprenticeship and Training, United States Department of Labor, or if no such recognized agency exists in a State, are registered with the Bureau of Apprenticeship and Training, United States Department of Labor.

(4) That:

(John Johnson) (a) WHERE FRINGE BENEFITS ARE PAID TO APPROVED PLANS, FUNDS, OR PROGRAMS

-- In addition to the basic hourly wage rates paid to each laborer or mechanic listed in the above referenced payroll, payments of fringe benefits as listed in the contract have been or will be made to appropriate programs for the benefit of such employees, except as noted in Section 4(c) below.

(b) WHERE FRINGE BENEFITS ARE PAID IN CASH (Bill Thomas)

☐ --Each laborer or mechanic listed in the above referenced payroll has been paid, as indicated on the payroll, an amount not less than the sum of the applicable basic hourly wage rate plus the amount of the required fringe benefits as listed in the contract, except as noted in Section 4(c) below.

(c) EXCEPTIONS

EXCEPTION (CRAFT)	EXPLANATION
Exceptions must be approved.	Use this space for any special
Send copy of plan.	or unusual circumstances which affects wages or employees.
REMARKS	NON-COVERED JOB CLASSIFICATIONS: Workers performing the following classifications are not subject to the prevailing wage requirements-Project Superintendent, Project Engineer, Supervisory Foreman, Watchman, Waterboy, Messenger, and Clerical workers such as timekeepers, payroll clerks, and bookkeepers.
Additional space which can be used for explanation.	

NAME AND TITLE	SIGNATURE
Samantha Sammons Bookkeeper ***	
THE WILLFUL FALSIFICATION OF ANY OF THE ABOVE STATEMENTS MAY SUBJECT THE CONTRACTOR OR SUBCONTRACTOR TO CIVIL OR CRIMINAL PROSECUTION. SEE SECTION 1901 OF TITLE 18 AND SECTION 231 OF TITLE 31 OF THE UNITED STATES CODE.	

\*\*\* AN AUTHORIZATION FORM OR LETTER MUST BE SUBMITTED FOR ANYONE SIGNING PAYROLLS OTHER THAN AN OFFICER OF THE COMPANY.

**Exhibit 8-6 – PAYROLL FORM**  
(Continued)

US DEPARTMENT OF LABOR WAGE AND HOUR DIVISION		SAMPLE ONLY		PAYROLL		SAMPLE ONLY													
(1) NAME OF CONTRACTOR ACES CONSTRUCTION COMPANY, INC.		(2) OR SUBCONTRACTOR		(3) ADDRESS		(4) PROJECT OR CONTRACT NO.													
#1 (Show # and FINAL at end)		#2 (Show # and FINAL at end)		1776 America Street; Anytown, Colorado 80202		101-35075-PM-WAH-L8													
PAYROLL NO.		FOR WEEK ENDING		PROJECT AND LOCATION		PROJECT OR CONTRACT NO.													
#1 (Show # and FINAL at end)		July 4, 1983		Happy Valley Manor - Anytown, Colorado 80202		101-35075-PM-WAH-L8													
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)												
NAME, ADDRESS, AND SOCIAL SECURITY NUMBER OF EMPLOYEE	NO. OF EXEMPTIONS	WORK CLASSIFICATION	HOURS WORKED EACH DAY							TOTAL HOURS	RATE OF PAY	GROSS AMOUNT EARNED	DEDUCTIONS				NET WAGES PAID FOR WEEK		
			S	M	T	W	T	F	S				FICA	WITH- HOLDING TAX	State W/H	Vac Fund		OTHER *	TOTAL DEDUCTIONS
John Doe 521-44-7086 1974 Clark Avenue Downtown, Colo 80311	1	Foreman Carpenter										10.95	357.70	15.18	53.60	8.00	10.00	86.78	270.92
Dick Brown 544-43-7806 Box 245 Anytown, Colo 80202	2	3 cu. Yd. Backhoe Operator										7.30							
John Doe 151-55-7805 1655 - 5th Avenue Anytown, Colo 80202	0	10 cu. Yd. Truck Driver										6.00	240.00	10.00	45.00	5.00	Ins. 5.00	65.00	175.00
Bill Thomas 515-38-1005 1050 Clerbridge St. Somewhere, Colo 80123	1	Cement Mason										5.60	239.30	10.59	48.00	7.00		65.59	173.71
John Johnson 505-43-5478 515 Broadway Anytown, Colo 80202	2	Cement Mason										5.90	188.80	10.00	15.90	5.80	10.00	42.50	175.45
Tom Thompson 505-43-5478 Box 1010 Baytown, Colo 80515	2	Laborer										4.95	94.05						
Tom Thompson		Cement Mason										5.90	217.95	10.80	15.90	5.80	10.00	42.50	175.45
Harry Jamison 555-44-3372 Box 333 Anytown, CO 80202		(Owner) Tile Setter																	
Joe Smith 527-38-7537 730 - 3rd Street Anytown, CO 80202	0	Apprentice Carpenter 1st Step 55%										4.02	128.64	5.00	8.00	2.00	15.00	113.64	

\* ALL DEDUCTIONS UNDER "OTHER" SUCH AS PURCHASES, ADVANCES, BONDS, ETC. MUST BE IDENTIFIED AND SUPPORTED BY A SIGNED STATEMENT FROM THE EMPLOYEE AUTHORIZING SUCH DEDUCTIONS WITH THE TOTAL AMOUNT AND REPAYMENT AMOUNT.

Revised 1/99

**Exhibit 8-6 – PAYROLL FORM**  
(Continued)

## **INSTRUCTIONS TO CONTRACTORS FOR PREPARATION OF PAYROLL FORM WH-347 and STATEMENT OF COMPLIANCE FORM WH-348.**

**(Example Forms WH-347 & WH-348 are included in these exhibits)**

1. Make certain all items in the heading are completed, including payroll number and project number. Also review reverse side of form to make certain proper block is checked and signature is affixed.
2. Include the name, address and social security number of each employee the first time such employee is listed on a payroll report.
3. For equipment operators and truck drivers, include a brief but clear description of the equipment the employee is operating. (This is to be shown on each payroll report.)
4. Show the hours and wages actually worked on the project separate from the employees' total wages for the week. To illustrate: "John Doe" on this example worked on the project 18 hours and on other projects for the same contractor 22 hours.  $(18 \times 6.45 = \$116.10)$  earned this project, \$239.30 gross amount earned all projects.)
5. When fringe benefits are sent to an approved program, they need not be included in the rate of pay (see example). Cement Mason, John Johnson receives \$5.90 per hour, an additional \$0.66 is being sent to approved plan which is indicated by marking box (a) of paragraph (4) on the Statement of compliance. Cement Mason, Bill Thomas receives the required fringe benefits in cash. The total rate of pay shown must be equal to the wage rate for that classification plus fringe benefits – \$5.90 (wage rate) plus \$0.66 (fringe) = \$6.56 and is indicated by marking box (b) of paragraph (4).
6. When an individual performs work on the project in more than one classification within the same workweek, have that individual sign the payroll report or submit a copy of his time card with the payroll report, if a lower rate of pay per hour is applicable.
7. When a valid subcontractor works with his employees on the job, he will be listed with his employees on each payroll. However, he need only show his name as owner (see Example: Harry Jamison (Owner)). If the subcontractor has no employees and performs alone on the project, he will submit weekly payrolls showing daily and total hours worked. When two or more working owners/operators (partners, co-owners, corporation officers, etc.) perform work on the project they must show daily and total hours worked. (Always show exact work classification.)

### **Exhibit 8-7 – PAYROLL FORM INSTRUCTIONS**

8. Submit an apprenticeship certification with the payroll report on which the apprentice is first reported. Indicate what step of apprenticeship and percentage of the journeyman wage he is receiving (see Example).
9. It is the General Contractor's responsibility to submit correct payrolls. The General Contractor should therefore compare the wage rate shown on each Subcontractor's payroll with the required rate shown on the wage determination for this project. If there are underpayments, restitution should be required and the payroll report corrected prior to submitting it to the Contracting Agency.
10. Payroll Form: Contractors are urged to use the Department of Labor (DOL) [Form WH-347, Payroll](#). The text of the Weekly Statement with Respect to the Payment of Wages, which is required by regulations of the Secretary of Labor, appears on the reverse side of this optional payroll form. A contractor may use an appropriate payroll form of his own choice, but he must report all required items of information and he must attach a copy of the "weekly statement," using either DOL Form WH-348, Statement of Compliance, which contains the "weekly statement" and related instructions, or any form containing the "weekly statement" in the identical wording as contained in [Forms WH-347](#) and [WH-348](#).
11. In the event any contractor sees he will be employing a trade for which a wage is not listed on the wage determination, it should be brought immediately to the attention of the Contracting Agency so that a wage rate determination for that trade can be made at the earliest possible date.
12. Submission of Payrolls: Each contractor or subcontractor shall submit to the Contracting Agency a completed payroll for each workweek that work is done on the project. All payrolls are to be sequentially numbered, and final payrolls shall be identified accordingly. If no work is performed on the project during a given period, on the next performance payroll, state: "No work performed from pay period ending [<date>](#) through [<date>](#)."

**Exhibit 8-7 – PAYROLL FORM INSTRUCTIONS**  
(Continued)

FORM LC-3

**ENGINEER'S PAYROLL CHECK SHEET**To: Civil Rights Bureau  
Labor Compliance – HelenaProject Number: \_\_\_\_\_  
Designation: \_\_\_\_\_From: EPM - \_\_\_\_\_  
Payroll Number: \_\_\_\_\_

Contractor: \_\_\_\_\_

Payroll Period: \_\_\_\_\_ To: \_\_\_\_\_ Zone: \_\_\_\_\_

- A. Check Bulletin Board – Monthly
- B. Notify Prime Contractor of Subcontractor Payroll Issues
- C. Spot Check (Form LC-1) 2<sup>nd</sup> and 4<sup>th</sup> Week and Monthly Thereafter. Attach to Corresponding Payroll and Submit to Helena, Headquarters.

	YES	NO
1. Does payroll indicate project number and payroll period covered?	_____	_____
2. Are full names, social security numbers and home addresses shown (first payroll entry)?	_____	_____
3. Are workers properly classified and codes indicated that correspond to the contract?	_____	_____
4. Has the contractor submitted conversion codes with first payroll, if needed?	_____	_____
5. Is overtime paid at the correct rate?	_____	_____
6. Are the deductions shown allowable and/or authorized?	_____	_____
7. Have apprenticeship papers been provided, if needed?	_____	_____
8. Is Statement of Compliance attached to payroll?	_____	_____
9. Has supplemental payroll been requested for this payroll?	_____	_____

**Under No Circumstances Should Any Payroll be Returned to a Contractor for Correction.**

Any correction necessary must be on a supplemental payroll. This check sheet should be filled out and attached to the FRONT of the payroll being submitted to the Civil Rights Bureau, with one LC-3 Form per payroll. The yellow copy is the FPM file copy.

**Additional Comments:** \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**Cover Memo is not necessary****Exhibit 8-8 – ENGINEER'S PAYROLL CHECK SHEET**

Form No. 46

**MISCELLANEOUS MATERIAL FORM****Field Inspection Report**

Project Number: \_\_\_\_\_ Termini: \_\_\_\_\_

Material Name: \_\_\_\_\_

Use: \_\_\_\_\_

Contract Item Number: \_\_\_\_\_

Manufacturer and Address: \_\_\_\_\_

Jobber and Address: \_\_\_\_\_

Report Submitted By: \_\_\_\_\_ Title: \_\_\_\_\_

Inspection Date: \_\_\_\_\_ Address: \_\_\_\_\_

Quantity: \_\_\_\_\_ Cert./Batch Number: \_\_\_\_\_

Reason for Field Inspection:

\_\_\_\_\_ Standard Procedure  
\_\_\_\_\_ Damaged Material(s)  
\_\_\_\_\_ No Previous Inspection  
\_\_\_\_\_ Other (Specify)

Remarks: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Field Recommends:

\_\_\_\_\_ Acceptance  
\_\_\_\_\_ Rejection

If Rejected, Give Reason: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Signed: \_\_\_\_\_ Title: \_\_\_\_\_ Date \_\_\_\_\_

Distribution:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_**Exhibit 8-9 – MISCELLANEOUS MATERIAL FORM**

## SPECIAL MATERIALS ACCEPTANCE REQUIREMENTS

The table below represents a sampling and testing schedule for items commonly incorporated into Local Entity CTEP projects. Notes referenced in this table are found on the following page of this exhibit. For large quantities and special items, the Local Entity is advised to review the requirements contained in the *MDT Materials Manual*.

Items	Recommended Unit of Measures	Acceptance Criteria
Aggregate	CU YD	See <a href="#">Note No. 1</a>
	TON	
Asphalt Plant Mix	SQ FT	See <a href="#">Note No. 2</a>
	CU YD	
	TON	
Barbed Wire Woven Wire	FT	<a href="#">Form 46</a> and MC and/or PL
Bike Rack	EA	<a href="#">Form 46</a> and MC and Catalog Cut
Bituminous Patch (Road Mix, Cold Mix)	TON	<a href="#">Form 46</a>
Concrete	SQ YD	See <a href="#">Note No. 3</a>
	CU YD	
	SQ FT	
Doors	EA	<a href="#">Form 46</a> and MC and Catalog Cut
Fencing (Wood Post, Steel Post)	LN FT	<a href="#">Form 46</a> and MC and/or PL
Foot Bridge (Pre-Fabbed)	EA/FT	<a href="#">Form 46</a> and MC
Electrical	EA/FT	<a href="#">Form 46</a> , Catalog Cut and PL
Excavation and Embankment	CU YD	<a href="#">Form 46</a> and See <a href="#">Note No. 4</a>
Gas Hot Water Heating	EA	<a href="#">Form 46</a> , Catalog Cut and PL
Guardrail	LN FT	<a href="#">Form 46</a> and MC
Handrail	FT	<a href="#">Form 46</a> and MC, Catalog Cut and PL
Insulation	ROLLS/BATTS	<a href="#">Form 46</a> and MC and PL
Lighting	EA (Pole)	<a href="#">Form 46</a> and MC and Catalog Cut
Lumber	LN FT, EA, BD FT	<a href="#">Form 46</a>
Paint	GAL	<a href="#">Form 46</a> and MC or PL
Plumbing Pipe & Fittings	EA	<a href="#">Form 46</a> and MC or Catalog Cut
Pump	EA (hp)	<a href="#">Form 46</a> and MC or Catalog Cut
Roofing	SQ FT	<a href="#">Form 46</a> and MC or Catalog Cut or PL
Sand/Gravel	CU YD	See <a href="#">Note No. 1</a>
	TON	
Seeding	SQ FT/ACRE	<a href="#">Form 46</a> with Certification conforming to MT Seed Law
Signs	EA/SQ FT	<a href="#">Form 46</a> and MC
Sod	SQ FT	<a href="#">Form 46</a> with Certification conforming to MT Seed Law
Top Soil	CU YD	<a href="#">Form 46</a>
Tree/Shrubs/Plants	EA	<a href="#">Form 46</a>
Weed Spray	SQ FT	<a href="#">Form 46</a> and MC or PL
Windows	EA	<a href="#">Form 46</a> and MC or Catalog Cut

MC – Manufacturers Certification  
PL – Product Label

### Exhibit 8-10 – SPECIAL MATERIALS ACCEPTANCE REQUIREMENTS

**SPECIAL MATERIALS ACCEPTANCE REQUIREMENTS NOTES**

1. Aggregate
  - Less than 200 cubic yards (400 tons) – Use [Form 46](#).
  - 200-500 cubic yards (400-1000 tons) – Conduct one test for gradation.
  - Over 500 cubic yards (1000 tons) – Conduct one test for gradation for each 500 cubic yards (1000 tons).
  - Use [Form 46](#) to verify quantity.
  - Density tests will be required, following the schedule above for gradation when this material is used in the traveled way. Proctor tests will be needed to establish acceptable moisture and density values.
2. Asphalt Hot Mix
  - Less than 500 tons – Provide a copy of the mix design.
  - Over 500 tons – Conduct one compaction test for each 500 tons, gradation test (cold feed), asphalt cement certification and invoice and a copy of the mix design.
  - Use [Form 46](#) to verify quantity.
  - When measured and paid for by area of coverage in-place cores will be required to verify thickness of the asphalt hot mix. One pair of cores per day is required.
3. Concrete
  - Less than 50 cubic yards – Include a concrete batch sheet and a copy of the mix design.
  - 50-100 cubic yards – Provide one set of cylinder (set is 2 specimens) for 28-day compressive strength, air test, slump test, a concrete batch sheet, including the mix design (sidewalks, curb and gutter, approach aprons, etc.)
4. Excavation and Embankment
  - Conduct one moisture density test and proctor for each 200 cubic yards (300 tons). If material is uniform, one proctor can be used to compare density tests taken for each 200 cubic yards or 300 tons.
  - Use [Form 46](#) to verify quantity.

**Exhibit 8-10 – SPECIAL MATERIALS ACCEPTANCE REQUIREMENTS**  
(Continued)

Report Number \_\_\_\_ of \_\_\_\_

**DAILY INSPECTION REPORT**

Inspector: \_\_\_\_\_ Project: \_\_\_\_\_ Date: \_\_\_\_\_

**Temperature**High: \_\_\_\_\_  
Low: \_\_\_\_\_**Weather**AM: \_\_\_\_\_  
PM: \_\_\_\_\_**Work Suspended**Time Suspended: \_\_\_\_\_  
Time Resumed: \_\_\_\_\_**Contractor**

Name of Contractor	Number of Supervisors	Number of Workers	Number of Hours

Contractor's Equipment and Personnel: \_\_\_\_\_  
\_\_\_\_\_Conversations with Contractor: \_\_\_\_\_  
\_\_\_\_\_**Daily Staff (Local Entity)**

Staff Member	Work Code	Regular Hours	Overtime	Vehicle Number	Start Mileage	End

**Work Items**

Item Number	Description	Station	Quantity	Unit	Book Number

Remarks: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Inspector's Signature/Date \_\_\_\_\_

Project Manager (Initials)/Date \_\_\_\_\_

Local Entity (Initials)/Date \_\_\_\_\_

**Exhibit 8-11 – DAILY INSPECTION REPORT**

## STATEMENT OF DAILY FORCE ACCOUNT WORK

Project No: \_\_\_\_\_ Page: \_\_\_\_\_ of \_\_\_\_\_

Project Name: \_\_\_\_\_ Date: \_\_\_\_\_

Detailed Description of Work: \_\_\_\_\_

Labor				
Employee Name	Classification	No. of Hours	Rate (\$)	Expended (\$)
Daily Labor Cost				
Total Cost to Date				
Equipment				
Equipment	No. of Hours	Rate (\$)	Expended (\$)	
Daily Equipment Cost				
Total Equipment Cost to Date				
Materials				
Materials	Unit	Quantity	Unit Price	Expended (\$)
Daily Material Cost				
Total Material Cost to Date\$				
			Page Total	
			Total Force Account to Date	

\_\_\_\_\_  
Local Entity Project Manager (hour approval)

\_\_\_\_\_  
Title

\_\_\_\_\_  
Local CTEP Administrator (rate approval)

\_\_\_\_\_  
Title

**Exhibit 8-12 – FORCE ACCOUNT FORM**

## REQUEST FOR QUOTATION

Vendor: \_\_\_\_\_  
\_\_\_\_\_Bill to: \_\_\_\_\_  
\_\_\_\_\_

**Civil Rights:** The contractor must, in performance of work on this contract, fully comply with all applicable Federal, State or local laws, rules and regulations. The contractor must comply with the provisions of all appropriate Federal laws, including Title VI of the *Civil Rights Act of 1964*. Any subletting or subcontracting by the contractor subjects subcontractors to the same provisions of the appropriate Federal laws, including Title VI of the *Federal Civil Rights Act of 1964*. In accordance with MCA 49-3-207, the contractor agrees that the hiring of persons to perform work on this contract will be made on the basis of merit and qualifications and that there will be no discrimination on the basis of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disabilities or national origin by the persons performing the contract.

Local Entity: \_\_\_\_\_

Project Number: \_\_\_\_\_

Project Name: \_\_\_\_\_

Project Site: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Sealed bids will be opened at *<time>*, on *<date>*, in *<location – address, city, state, zip code>*, as per the terms, conditions, requirements and specifications detailed herein.

Enclose as evidence of good faith and as a guaranty that the bidder will enter into a contract a proposal guaranty in the amount of at least ten percent (10%) of the bid, made unconditionally payable to *<Local Entity name>* which at the bidder's option may be cash, cashier's check, certified check, bank money order or bank draft, in any case drawn and issued by a National Banking Association located in the State of Montana. The proposal guarantee shall be forfeited to the Local Entity, if the bidder shall fail or refuse to comply with the provisions or the specifications detailed herein.

Questions may be directed to *<point of contact name>*, at *<point of contact phone number>* in *<point of contact location – address, city, state, zip code>*.

Please respond so that your sealed bid will be delivered before *<time>*, to:

Local Entity Name: \_\_\_\_\_

Address: \_\_\_\_\_

Terms, Conditions, Requirements and Specifications (drawings attached):

## EQUIPMENT RENTAL RATE DETERMINATION

Federal-aid Project Number: \_\_\_\_\_

Contractor: \_\_\_\_\_

### Equipment Data

Manufacturer: \_\_\_\_\_ Year: \_\_\_\_\_ Model/Type: \_\_\_\_\_

Rated Capacity or Size: \_\_\_\_\_ Serial Number: \_\_\_\_\_

Engine Type (gas/diesel/etc.): \_\_\_\_\_ Horsepower: \_\_\_\_\_

Transmission (e.g., 4-speed): \_\_\_\_\_ Attachments/Accessories \_\_\_\_\_

Remarks: \_\_\_\_\_

Date Submitted: \_\_\_\_\_ by \_\_\_\_\_

### Rate Determination

Blue Book Volume Number	Machine (Section, Page)	Attachment (Section, Page)
_____	_____	_____
Current Monthly Rate	(A) _____	(A) _____
Regional Adjustment Factor	(B) _____	(B) _____
Adjustment Factor for Year of Manufacture 20_____	(C) _____	(C) _____
<b>If Discontinued Only</b>	(C/D) _____	(C/D) _____
Adjustment Factor for last Year of Manufacture 20_____	(D) _____	(D) _____
Adjusted Base Rate	\$ _____	\$ _____
Hourly Operating Rate	\$ _____	\$ _____
Totals	\$ _____	\$ _____
Total Adjusted Base Rates		\$ _____
Total Hourly Operating Rates		\$ _____
<b>Total Hourly Rate</b>		<b>\$ _____</b>
a) $A/176 \times B \times C =$ _____ or b) $A/176 \times B \times [C/D] =$ _____		

**Exhibit 8-14 – EQUIPMENT RENTAL RATE DETERMINATION FORM**

## MONTANA DEPARTMENT OF TRANSPORTATION CERTIFICATE OF COMPLETION

<City, State, Zip Code>

Date: \_\_\_\_\_

Project Number: \_\_\_\_\_ Bid Opening Date: \_\_\_\_\_

Project Name: \_\_\_\_\_ Contract Award Date: \_\_\_\_\_

Uniform Project Number: \_\_\_\_\_ Work Started: \_\_\_\_\_

County: \_\_\_\_\_ Work Completed: \_\_\_\_\_

I, the Project Manager for this project, hereby certify that on <date> the contractor certified this project's completion, and that the contractor was in compliance with all Civil Rights and DBE Requirements, has paid all labor and all suppliers in full, and all construction and materials used were in compliance with the project plans and specifications, as authorized by the MDT. The <Local Entity name>, and MDT representatives, and I made a final inspection of the project on <date>, and they verified the completion and the fact that the project was fully and satisfactorily completed on that date. Therefore, I recommend that MDT accept the finalized project.

\_\_\_\_\_  
Project Manager                      Date                      Local CTEP Administrator                      Date

### CONCURRED:

\_\_\_\_\_  
District Liaison                      Date                      CTEP Engineer                      Date

### ACCEPTED:

\_\_\_\_\_  
Administrator, Engineering Division                      Date

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